In The

SUPREME COURT

OF THE UNITED STATES

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October Term, 1976

PETITION
For Writ Of Certiorari

To The
UNITED STATES COURT OF APPEALS
For The First Circuit

76-698

No. Misc.

OWEN F. LYONS, Petitioner

v.

JOHN F. FAGAN, ET AL,
Respondents

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Owen F. Lyons, pro se
28 Ellsworth Ave.
Cambridge, Ma. 02139

Owen F Lyons

In The
SUPREME COURT
OF THE UNITED STATES

October Term, 1976

No. , Misc.

OWEN F. LYONS, Petitioner

v.

JOHN F. FAGAN, ET AL
Respondents

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MOTION

For Leave To File This Petition
For Writ Of Certiorari To The
United States Court Of Appeals
For The First Circuit

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The petitioner moves the Court for leave to file this petition for writ of certiorari to the United States Court of Appeals, First Circuit.

The petitioner moves the Court to review the record of this case as it unfolded in the District Court.

He further requests the Court to review his brief filed in the Court of Appeals and that Honorable Court's response to it in relation to

the Memorandum and Order of the District Court.

The petitioner further requests the Court to consider his amplifying arguments which attempt to give reasons, beyond those presented in his brief to the Appeals Court, why the federal courts have jurisdiction over his case.

Owen F. Lyons, pro se

28 Ellsworth Ave.

Cambridge, Ma. 02139

EL 4 - 1261

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## Table of cases cited

Massachusetts Statute Cited

Mass. Gen. Laws Ch. 260 # 12
Fraudulent Concealment -

If a person liable to a personal action fraudulently conceals the cause of such action from the knowledge of the person entitled to bring it, the period of discovery of his cause of action by the person so entitled shall be excluded in determining the time limited for the commencement of the action.



Publications Cited

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Owen T. Lyons

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SUPREME COURT
OF THE UNITED STATES

October Term, 1976

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No. , Misc.

OWEN F. LYONS, Petitioner

v

JOHN F. FAGAN, ET AL,
Respondents

To The Honorable The Chief Justice
And The Associate Justices
Of The Supreme Court
Of The United States:

The petition of the above named petitioner for a writ of certiorari to review the decree of the U. S. Court of Appeals for the First Circuit, entered October 18, 1976, dismissing for lack of jurisdiction, the petitioner's appeal from the Memorandum and Order of the District Court, entered July 13, 1976, respectfully shows to this honorable court:

## The Opinions Below

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS — Civil Action
No. 75-3845-M

v.

JOHN F. FAGAN ET AL

July 13, 1976

MEMORANDUM and ORDER

MURRAY, D.J. This case is before the court on plaintiff's motion that "The Court allow a late filing amending the jurisdictional grounds upon which the plaintiff mistakenly relied to jurisdiction by virtue of the First and Fourteenth Amendments to the United States Constitution and the laws of the United States". Oppositions have been filed by several of the defendants.

The case earlier came on for hearing on the motions to dismiss of those defendants who have now filed oppositions to plaintiff's motion to amend his complaint. The pro se complaint in essence alleges tortious medical malpractice on the part of the defendants.[1] The complaint as filed alleged federal question jurisdiction, 28 U.S.C. # 1331 and noted venue in this district under 28 U.S.C. #1391 (b). The complaint also alleged jurisdiction under Mass. Gen. Laws ch. 260, # 12. This reference to a Massachusetts statute dealing with an unrelated issue[2] was apparently designed to invoke the court's jurisdiction under the diversity statute. 28 U.S.C. # 1332.

Despite the allegation in the complaint invoking the federal question jurisdiction, an examination of the complaint and the arguments of the parties led the court at the time of the previous hearing to the conclusion that there was no basis for federal question jurisdiction. The case appeared to rest solely on a state cause of action sounding in tort. Thus, if jurisdiction to hear this case existed at all it would have had to be found in the diversity jurisdiction.



At the hearing, counsel for defendants Fagan, Mangano, Filtzer and The Cambridge Hospital argued that the complaint on its face failed to meet the long-standing requirement of complete diversity. See Strawbridge v. Curtiss, 7 U.S. (3 Cranch) 267 (1806). Plaintiff contended that minimal diversity was sufficient. The court declined plaintiff's implicit invitation to overrule Strawbridge v. Curtiss, supra, and granted the motions to dismiss.

Plaintiff now returns with a motion to amend his jurisdictional grounds designed to rehabilitate his complaint. Under the authority of Fed. R. Civ. P. 15(a), the court, mindful of the adjuration that the allegations of a pro se complaint are held to less stringent standards than formal pleadings drafted by lawyers, Haines v. Kerner, 404 U.S. 519, 520, (1972), and may not be dismissed unless it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief", Conley v. Gibson, 355 U.S. 41, 45-46 (1957), will grant the plaintiff's motion to amend the complaint and reconsider sua sponte its jurisdiction to grant plaintiff the relief he seeks in his complaint.

With reference to the allegations of federal question jurisdiction, the complaint is frivolous. Plaintiff now seeks to bootstrap allegations of medical malpractice into violations of the First and Fourteenth Amendments and certain " Civil Rights Acts of the 1800's and 1960's" by asserting that the acts of the defendants have in some unspecified manner interfered with his "participation in the federal elections of 1968 and 1970 ...".

These fanciful assertions, even given the extraordinary hospitality the federal courts are required to provide the pro se complainant, are insufficient to invoke the federal question jurisdiction. Cf. Mainelli v. Providence Journal Co., 312 F. 2d 3 (1st Cir. 1962).

Turning to the other possible alternative basis for jurisdiction to hear the matters os which plaintiff complains, the court finds that the complaint, as amended, continues to lack the required complete diversity of citizenship. In examining the complaint to determine whether this requirement is met as of the date of the commencement of the action, cf. Gaines v. Dixie Carriers, Inc., 434 F. 2d 52, 54 (5th Cir. 1970), and applying the relation back provision for amendments, Fed. R. Civ. P. 15 (c), it appears that all the defendants save one are alleged in the complaint, as amended, to be citizens of the same state as the plaintiff. The plaintiff has made no effort to recast his pleadings, even after the earlier hearing on the motions to dismiss, to secure complete diversity. Consequently, the amended complaint is insufficient to invoke the diversity jurisdiction of the federal courts.

Thus affording to plaintiff full opportunity to to rehabilitate his complaint, it now appears from the complaint, as amended, the court lacks jurisdiction to grant relief therunder, and accordingly the complaint is hereby dismissed.

Frank J. Murray
United States District Judge

FOOTNOTES

1. The plaintiff's complaint was originally filed on September 12, 1975. Plaintiff amended his complaint on October 17, 1975, prior to the



serving of any responsive pleadings, as is his right under Fed. R. Civ. P. 15 (a). It is the October 17 complaint that the court considered in the previous hearing.

On February 5, 1976 plaintiff filed a motion to amend his complaint again. This motion was not considered in connection with the previous hearing on May 20, 1976. To the degree that the matters contained in the February 5 motion have not been incorporated in the plaintiff's motion now before this court they are considered to have been waived, and accordingly are hereby denied.

2. Mass. Gen. Laws Ch. 260, # 12 deals with the statute of limitations applicable when the cause of the action has been fraudulently concealed from the person entitled to bring it.

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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

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No. 76-1404

OWEN F. LYONS
Plaintiff, Appellant,

v.

JOHN F. FAGAN, ET AL
Defendants, Appellees.

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS
(Hon. Frank J. Murray, U. S. District Judge)

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Before COFFIN, Chief Judge,

McENTEE and CAMPBELL, Circuit Judges.

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Owen F. Lyons on brief pro se

Jared H. Adams on brief for S. N. Mangano and John F. Fagan, appellees.

Edward D. McCarthy, Edward A. Cunningham, and Lawrence J. Bloom on brief for Horst S. Filtzer and Cambridge Hospital, appellees.

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October 18, 1976



Per Curiam. This appeal is from the district court's dismissal of appellant's second amended complaint for lack of jurisdiction. We affirm.

Appellant's initial complaint in this pro se action alleged both federal question, 28 U. S. C. # 1331, and diversity jurisdiction, 28 U. S. C. # 1332, but stated essentially a claim for medical malpractice against four defendants who are residents of Massachusetts, as is appellant. The first amended complaint, filed as of right within the time limit set by Rule 15 (a), included two additional defendants, one of whom is a resident of California, and restated the factual allegations of the complaint. Defendants moved to dismiss the the complaint for failure to state a cause of action and for lack of jurisdiction, and the district court granted the motions to dismiss "on the ground diversity of citizenship does not occur". See Strawbridge v. Curtiss, 7 U. S. (3 Cranch) 267 (1806).

Appellant thereafter moved for leave to amend the jurisdictional grounds of the complaint to include allegations that defendants' actions infringed on his first and fourteenth amendment rights and violated the "Civil Rights Acts of the 1800's and the 1960's and the 1970's . . ." because of the "obvious cause and effect relationship between the plaintiff's participation in the federal elections of 1968 and 1970. . . and his allegations of injury. . . "(first ellipses in original). Reading appellant's complaint under "less stringint standards than formal pleadings", Haines v. Kerner, 404 U. S. 519, 520 (1972), the district court granted appellant's motion to amend the

complaint and then reconsidered the jurisdictional basis for the claim. The court reaffirmed its ruling as to the lack of diversity jurisdiction and then concluded that the new allegations, which it termed "fanciful assertions", did not invoke federal question jurisdiction. Having reviewed the amended complaint, we think the district court was correct in dismissing the complaint since "the alleged claim under the Constitution or federal statutes clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or ... is wholly insubstantial and frivolous." Bell v. Hood, 327 U. S. 678, 682-83 (1946).

Affirmed.

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JUDGMENT
Entered October 18, 1976

This cause was submitted on brief for appellant and memoranda in support of motions for summary affirmance.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The order of the District Court is affirmed.

By the Court:

/s/ Dana H. Gallup,
Clerk.



IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS
Plaintiff

Civil Action
75 - 3845 - M

v.

JOHN F. FAGAN ET AL
Defendants

October 17, 1975

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AMENDED
COMPLAINT

1. THE PARTIES

The plaintiff, Owen F. Lyons, 28 Ellsworth Ave., Cambridge, Massachusetts, 02139, is a resident of Cambridge, Massachusetts and is a citizen of the United States.

Defendant John F. Fagan, 1679 Massachusetts Ave., Cambridge, Massachusetts, 02138, is a physician who practices medicine at The Cambridge Hospital, Cambridge, Massachusetts. He is a citizen of the United States and Massachusetts.

Defendant S. N. MANGANO, 384 Huron Ave., Cambridge, Massachusetts, 02138, is a physician who practices medicine at The Cambridge Hospital, Cambridge, Massachusetts. He is a citizen of Cambridge, Massachusetts, and the United States.

Defendant Horst S. Filtzer, 1493 Cambridge St., Cambridge, Massachusetts, is a physician who practices medicine at The Cambridge Hospital. He is a citizen of Massachusetts and the United States.

Defendant Brown is a citizen of the United States. He is a physician and practiced medicine in February, 1973 at the Cambridge Hospital. His handwritten interview with the plaintiff is in The Cambridge Hospital's record. The Cambridge Hospital, 1493 Cambridge St., Cambridge, Massachusetts, 02139.

Defendant Hospital, The Cambridge Hospital, 1493 Cambridge St., Cambridge, Massachusetts, 02139, is chartered as a private hospital but is completely dependent upon city, state and federal government funds for the financing of operations, functions, and personel.

Defendant E. M. Miner, 10242 Canoga Ave., Chatsworth, California, 91311, is a citizen of California and the United States. He is a physician who examined the plaintiff around August 1, 1975.

2. Jurisdiction

Title 28 U.S.C. Code - Chapter 85, Section 1331
Chapter 87, Section 1391 (b)
Massachusetts General Laws
Chapter 260, Section 12

3. Facts

In 1958 plaintiff was admitted to the Veterans Administration Hospital, Jamaca Plain, for surgery to relieve a fissure of the anus ring.

V. A. physicians removed the anus ring and left a simulated vulva.

Defendant Fagan attended to the plaintiff's care for five days following the operation at the Cambridge Hospital without comment on the mutilation received at the V. A.

Defendant Fagan had plaintiff admitted to The Cambridge Hospital on February 6, 1973, for an operation to correct a protrusion the size and shape of a ping pong ball located between the left thigh and the scrotum. A urine sample was taken



on this day but no other attention was paid to the plaintiff.

The next day, February 7, defendant Mangano noted in the hospital record that he was scheduled for a "herniorrhaphy" on Feb. 8; there was no X-ray to lead him to believe that the radical form of operation was needed on Feb. 7.

On February 7, defendant Brown examined plaintiff's penis, scrotum, and anus. He then proceeded to question the plaintiff about his love life. These handwritten notes are in the hospital record.

Defendant Brown noted that the plaintiff's testicles were in the scrotum but he did not think them very large. He noted that the plaintiff's anus to be a "soft, non-tender, 0 mons, an "arrhenominetic rebound", adding the word "guerin."

"guerin" refers to the French surgeon Guerin (1816 - 1895) who described the valve of the navicular fossa, the depression between the vaginal aperture and the forchette.

Defendant Brown also noted that the plaintiff had a "fair amount of paranoia."

Like defendant Mangano (who) knew before X-rays a herniorrhaphy was needed, defendant Brown noted as

"Imp. (1) inguinal her ...
Plan: Sigmondoscopy ...
herniorrhaphy if no lesion" i. e. in the Sigmoid colon.

The only notes in the hospital record on the day of the operation, Feb. 8, were written by defendant Fagan. His pre-operation note views the problem as a "pantaloon hernia" and his post operation note describes his first cut as a "transverse incision."

The hospital records show that defendant Filtzer assisted in the operation.

On February 8, 1973 all pre-operation examinations relative to the type of operation which had to be done were begun, i. e. X-rays, ennamas.

Standard hospital procedures call for these examinations to be completed the day before the operation, the very reason why the plaintiff was admitted on February 6 for an operation to take place on February 8.

Post-Operation Visits to Defendant Fagan

In October or November of 1973 plaintiff visited defendant Fagan to express plaintiff's fear of death by cancer which plaintiff thought was concealed from him.

Plaintiff complained of unusually long stools (12 to 14 inches), of erections for no sexual reason, of a masterbation incident when plaintiff felt the sexual sensation at ejaculation spread across the hernia scar, and of a weight loss (175 pounds down to 140).

Plaintiff had been dieting and exercising.

Defendant Fagan made a physical examination and had urine and blood tests taken. He reassured plaintiff that he was in good health and prescribed an end to dieting and jogging and an increase in food and sweets intake.

In January or February, 1974, plaintiff returned to defendant Fagan and renewed his belief of imminent death for following reasons:

- early morning sexual pleasure and excitement in the legs and buttocks of a kind experienced when petting a woman;
- also continuance of long stool passing and daily masterbation.

Defendant Fagan made a physical examination, had blood and urine samples taken and declared plaintiff in good physical health

In May of 1975 plaintiff returned to defendant Fagan renewing his plea for information as to how much time he had to live.



Plaintiff told defendant Fagan he was worried because he believed that he was going to be married in the near future.

Plaintiff renewed his concern for extra-long stools and unsolicited sexual pleasure in his buttocks and legs.

Defendant Fagan admonished plaintiff for his interest in Playboy and Penthouse magazines.

Defendant Fagan made a physical examination and advised plaintiff that he could find nothing physically wrong.

Defendant Fagan said he could only surmise that plaintiff was mentally disturbed and recommended that plaintiff visit a psychaitrist whom he knew at The Cambridge Hospital.

Plaintiff rejected this advice saying that if the doctor could find nothing wrong perhaps there was really nothing wrong.

In June of 1975 plaintiff noticed a throbbing in two specific locations in the buttocks which he believed were the location of the male's testes ... plaintiff believed that testes were quite separate from the testicles. Plaintiff thought he had better stop masterbating so much.

In July of 1975 plaintiff visited a Dr. Miner in Los Angeles, Cal., because the plaintiff's brother wanted to prove to the plaintiff that he really was not dying.

1. The doctor said he could find nothing wrong
2. During this physical examination the doctor seemed astonished that plaintiff could pass such long stools without even feeling them pass out through his rectum.

When the plaintiff told Dr. Miner that while on the beach recently his buttocks became so sexually excited that plaintiff could not keep his hands still ... Dr. Miner commented that women report feelings of sexual pleasure while sun bathing.

This comment together with Dr. Miner's pre-occupation and obvious interest in the plaintiff's anus ... taking a long time wiping off the lubrication jelley used for the rectal-bladder examination ... these things alerted the plaintiff that something extraordinary had escaped the plaintiff's awareness about himself.

Plaintiff's hand written notes to Dr. Miner to assist him in diagnosing the problem pointed out that that the plaintiff's penis had actually lengthened more than a half inch in the past year.

ALLEGATIONS

1. Defendants surgically produced an opening in the left spermatic cord so that sperm from the Ductus diferens would empty into the pelvic area.

2. Defendants exposed the Sacral plexus and/or the Superior gluteal nerves which are located in the glutaeus maximus muscles ... to the end that

(a) the nerves would simulate ovary activity ... and

(b) the nerves would stimulate tension in the buttocks and legs and pelvis region, a stimulation that simulates sexual excitement.

3. Defendants exposed the Sacral plexus and/or the Superior gluteal nerves to live, active sperm fluid which empty out from the left spermatic cord at the site where the exposed nerves are located.

4. The obstruction (partial), or the creation of an artificial anus at the site of the Sigmoid flexure of the colon ... to the end that

(a) large, long stools should build up on the Descending colon and, by their passing through the colon, would irritate the exposed nerves, would deactivate the sphincter ani muscle, and

- would leave the rectum an empty sleeve for penis accomodation - a simulated



vaginal barrel.

5. Defendant Miner of California knew, or by examination, gained knowledge of the plaintiff's condition. His concealment of the facts from the plaintiff risked the physical and mental health of the plaintiff.

6. Defendants created a pathological condition in the plaintiff's penis by exposing nerves vital to its proper functioning. This could mean the eventual surgical removal of the plaintiff's penis.

Plaintiff alleges the above harm was done to him by the defendants because of their wilfull, wanton, and reckless negligence and misconduct.

RELIEF

Plaintiff petitions the Court for ordinary and punative damages in money awards from the defendants as listed below:

| | |
|---|---|
| 1. Harm to Spermatic cord | $ 1, 000, 000 |
| 2. Exposure of nerves | 1, 000, 000 |
| 3. Manipulation of Sigmoid colon | 500, 000 |
| 4. Pain and Suffering | 1, 000, 000 |
| | $ 3, 500, 000 |

signed: Owen F. Lyons pro se

Certificate of Service requirements met.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS — Civil Action
No. 75-3845-M

v.

JOHN F. FAGAN ET AL

February 5, 1976

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AMENDED COMPLAINT

I. The Parties

1.
The plaintiff, Owen F. Lyons, 28 Ellsworth Ave., Cambridge, Massachusetts, 02139, is a citizen of the United States, and of Massachusetts.

2.
Defendant John F. Fagan, 1679 Massachusetts Ave., Cambridge, Massachusetts, 02138, is a physician who practices medicine at the Cambridge Hospital, Cambridge, Massachusetts. He is a citizen of the United States and of Massachusetts.

3.
Defendant S. N. Mangano, 384 Huron Ave., Cambridge, Massachusetts, 02138, is a physician who practices medicine at the Cambridge Hospital, Cambridge, Massachusetts. He is a citizen of the United States and of Massachusetts.

4.
Defendant Horst S. Filtzer, 1493 Cambridge St., Cambridge, Massachusetts, 02139, is a physician who practices medicine at the Cambridge Hospital, Cambridge, Massachusetts. He is a citizen of the United States and of Massachusetts.



5.
Defendant Brown is a citizen of the United States. He is a physician who practiced medicine in February, 1973, at the Cambridge Hospital, Cambridge, Massachusetts.

Dr. Brown M.D.
c/o The Cambridge Hospital
1493 Cambridge St.
Cambridge, Massachusetts,
02139

6.
Defendant Hospital, The Cambridge Hospital, 1493 Cambridge St., Cambridge, Massachusetts, 02139, also to be identified as the City of Cambridge, a municipal corporation duly organized and existing under the laws of the Commonwealth of Massachusetts and having a usual place of business in Cambridge, Middlesex County.

7.
Defendant E. M. Miner, 10242 Canoga Ave., Chatsworth, California, 91311, is a citizen of the United States and of California. He is a physician who examined the plaintiff around August 1, 1975.

8.
Francis L. Comunale, defendant, is a citizen of the United States and of Massachusetts. He practices medicine at the Cambridge Hospital.

Francis L. Comunale,
The Cambridge Hospital
1493 Cambridge St.,
Cambridge, Massachusetts,
02139

9.
Defendant Leonora DeLaPena, formerly of 25 Beacon St., Somerville, Massachusetts, now practicing medicine in Connecticut or Rhode Island. She is a citizen of the United States.

9. (continued)

Leonora DeLaPena, M.D.
c/o The Cambridge Hospital
1493 Cambridge St.
Cambridge, Mass., 02139

## II. Jurisdiction

10.
Title 28 U. S.C. Code -- Chapter 85, Section 1331
Chapter 87, Section 1391 (b)
Massachusetts General Laws Chapter 260 Section 12

## III. Facts

11.
In 1958 plaintiff was admitted to the Veterans Administration Hospital, Jamaca Plain, for surgery to relieve a fissure of the anus ring. V. A. physicians removed the anus ring and left a simulated vulva.

12.
Defendant Fagan attended to the plaintiff's care for five days following the operation at the Cambridge Hospital without comment of the mutilation received at the V. A.

13.
After the passage of some 15 years in which time the plaintiff had no contact with Defendant Fagan, the plaintiff was admitted to the Cambridge Hospital on February 6, 1973, as Dr. Fagan's patient to undergo surgery for a hernia. There was a protrusion half the size and shape of a ping-pong ball between the left thigh and the scrotum.



14.
There was no other lump or protrusion of any kind and the only pain was at the site of the protrusion between the thigh and the scrotum.

15.
On February 6, 1973, a urine sample and blood sample were taken but no other attention was paid to the plaintiff.

16.
On the next day, February 7, defendant Mangano noted in the hospital record that he was scheduled for a "herniorrhaphy" on February 8; there was no x-ray to lead him to believe that the radical form of operation was needed on February 7.

17.
On February 7, defendant Brown examined the plaintiff's penis, scrotum and anus. He then proceeded to question the plaintiff about his sex life. These handwritten notes are in the hospital record.

18.
Defendant Brown noted that the plaintiff lived alone with his elderly parents.

19.
Defendant Brown noted that the plaintiff had "a fair amount of paranoia."

20.
Defendant Brown noted that the plaintiff's testicles were in the scrotum but he did not think them very large.

21.
Defendant Brown noted that the plaintiff's anus was a "soft, non-tender, [illegible] mons, an arrhenomimetic rebound".

22.
Defendant Brown added, at this point, the word "guerin", The medical dictionary lists Guerin, a French surgeon (1816 - 1895) whose work involved connecting strands of nerve fibers which united like-structures, i. e. like the labia majora or, in the case of the plaintiff perhaps, the rectum.

23.
Finally defendant Brown outlined his plan for the operation. First he thought it most important that the problem be described as an inguinal hernia. The operation for this type of operation calls for a direct involvement with the spermatic cord.

24.
Defendant Brown then noted that a Sigmondoscopy should be done to see if there was any internal lession on the Sigmoid colon.

25.
Defendant Brown then noted that if there was no lession on the Sigmoid colon, then the key part of the plan could be performed, i. e. a herniorrhaphy (which is the radical form of hernia operation requiring internal cutting and sewing.

26.
The only notes in the hospital record on the day of the operation, February 8, are by defendant Fagan who views the problem to be a "pantaloon hernia". His post operation note describes his first cut as a "transverse incision".

27.
The hospital records show that defendant Filtzer assisted in the operation.

28.
The two anesthetists recorded in the hospital record are defendant DeLaPena and defendant Comunale.



29.
On February 8, 1973 all pre-operation examinations relative to the type of operation which had to be done were begun, i. e. x-rays, enemas. Standard hospital procedures call for these examinations to be completed the day before the operation, the very reason why the plaintiff was admitted on February 6 for an operation to take place on February 8.

Post Operation Visits To Defendant Fagan

30.
In October or November of 1973 plaintiff visited Defendant Fagan to express fears of death by cancer which plaintiff thought was concealed from him.

31. ( This number mistakenly omitted. )

32. Plaintiff told his doctor that he was constantly passing gas (farting), that he was passing every other day unusually large and long stools (12 to 14 inches long. )

33.
Plaintiff explained further that during a masterbation session the sexual sensation at ejaculation spread across the hernia scar.

34.
Plaintiff further complained of a large increase in the number of erections for no sexual reason.

35.
Plaintiff complained that although he had been dieting and exercising the extraordinary fall in weight in one month, 175 pounds down to 140, alarmed him.

36.
Defendant Fagan made physical examinations and had urine and blood tests taken. He reassured the plaintiff that he was in good health and prescribed an end to dieting and jogging and an increase in

36 (continued)
foods and sweets intake.

Second Visit To Defendant Fagan

37.
In January of February, 1974, plaintiff returned to defendant Fagan and renewed his belief that he was dying of cancer.

38.
The plaintiff complained of an unusual "bulging" in his waisteline, a lack of muscle tone above the hips and coming around to the navel.

39.
The plaintiff pointed to the whole section above the waisteline and under the rib case; he told the doctor that it seemed to be "caved in", as though the muscles and intestines in that area had been removed, because of cancer perhaps.

40.
The plaintiff related to the doctor that there were stirrings of sexual pleasure and excitement early in the mornings just before rising. The plaintiff was unable to pin point the locations of these sensations except that they were located in the pelvic area, the buttocks, and legs.

41.
The plaintiff renewed his reports of extra large and long stools and daily masterbation.

42.
Defendant Fagan made a physical examination, had blood and urine samples taken and declared the plaintiff in good health.

43.
The plaintiff still did not believe the doctor and began making arrangements in anticipation of death by cancer. He contacted several Jesuit priests and pressed them to accept a power of attorney empowering them to prevent surgery



when there was no prospect of recovery to a useful life. These priests convinced the plaintiff that he should delay action awhile, that perhaps he really was not dying.

Third Visit To Defendant Fagan

44.
In May of 1975 plaintiff returned to defendant Fagan and renewed his plea for information as to how much time he had to live.

45.
Plaintiff explained that he had good reason to demand this information because he thought that he was going to be married in the near future.

46.
Plaintiff renewed his concern for the extraordinary size of his stools.

47.
He said he was not happy that no explanation was forthcoming about the early morning sexual sensations in his legs and buttocks.

48.
Plaintiff's report of early morning masterbation episodes brought forth the comment from the doctor that the plaintiff should give up his interest in "girly" magazines.

49.
Defendant Fagan made another physical examination and advised the plaintiff that there was nothing physically wrong.

50.
However, the doctor continued, his diagnosis indicated serious mental disturbance and the plaintiff should visit a psychaitrist whom he knew at the City hospital. Plaintiff refected this advice.

51.
In June of 1975 plaintiff noticed a throbbing in two specific locations in the buttocks, ... from the rectum about three inches across and three inches up on each cheek.

52.
In July of 1975 plaintiff visited a Dr. Miner in Los Angeles, Cal., because the plaintiff's brother wanted to prove to the plaintiff that he really was not dying. This doctor said he could not find anything wrong.

53.
When the plaintiff told Dr. Miner that while on the beach early in July his buttocks became so sexually excited that the plaintiff could not keep his hands still.

54.
Dr. Miner noted that women report sensations of sexual pleasure while sun bathing.

55.
Dr. Miner's allusion to women together with his preoccupation and obvious interest in the plaintiff's anus, ... taking a long time wipping off the lubrication jelly used for the rectal-bladder examination ... these things alerted the plaintiff that something extraordinary had happened to the plaintiff without his knowledge.

Allegations

56.
Defendants surgically produced an opening in the left spermatic cord so that sperm from the Ductus diferens, as well as other fluids and hormones produced by the testicles, would be passed into the body cavity to be eliminated as body wastes.



57.
Defendants exposed nerves in the plaintiff's buttocks so that with each bowel movement, with the passage of a stool through the sigmoid colon, these exposed nerves excite muscle tension in the buttocks and legs and penis.

58.
The muscle tensions excited by the exposed nerves are the kind associated with sexual pleasure and sensation.

59.
The defendants exposed the Sacral plexus and/or the Superior gluteal nerves which are located in the glutaeus maximus muscles.

60.
The defendants exposed the inferior mesenteric ganglion in each buttock so that stools passing through the colon would excite these nerves thereby creating muscle tensions in the buttocks and legs, in addition to exciting the nerve endings in the penis and rectum, all giving sensations of sexual pleasure.

61.
The defendants have created a paghological condition in the plaintiff's penis by the exposure of inferior mesenteric ganglion which will deny to plaintiff the normal and natural pleasures of sexual intercourse.

62.
Defendant Miner of California knew, or by examination gained knowledge of the plaintiff's condition. His concealment of the facts from the plaintiff risked the physical and mental health of the plaintiff.

63.
Anesthetists Leonora DeLaPena and Francis L. Comunale kept the plaintiff unconscious during the time they knew the plaintiff was the victim of unspeakable and dishonorable actions of fellow members of the medical profession.

64.
The plaintiff alleges the above harm done to him by the defendants because of their wilfull, wanton and reckless negligence, and their malicious misconduct.

RELIEF

65.
Plaintiff petitions the Court for ordinary and punative damages in money awards from the defendants as listed below:

| | |
|---|---|
| 1. Sterilization | $1,000,000 |
| 2. Castration | 1,000,000 |
| 3. Exposure of nerves | 1,000,000 |
| 4. Pain and suffering | 1,000,000 |
| | 4,000,000 |

signed: Owen F. Lyons pro se
February 5, 1976



UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS — Civil Action No. 75-3845-M

v.

JOHN F. FAGAN ETAL

June 11, 1976

MOTION

The Court allow a late filing amending the jurisdictional grounds upon which the plaintiff mistakenly relied to jurisdiction by virtue of the First and Fourteenth Amendments to the United States Constitution and the laws of the United States.

signed: Owen F. Lyons pro se

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Certificate of Service: This is to certify that this motion has been mailed first class postage paid to the following:

Jared H. Adams, Atty. for def. Fagan, Mangano
Laurence J. Bloom, Atty. for def. Filtzer
E.M. Miner, def., Chatsworth, California
Dr. Brown, M.D., def., c/o Cambridge Hospital
Edward D. McCarthy, Atty. for def. Filtzer and Cambridge Hospital

Owen F. Lyons, pro se

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS — Civil Action
No. 75-3845-M

v.

JOHN F. FAGAN ET AL

June 11, 1976

MOTION

The Court extend its jurisdiction over the case because the obvious cause and effect relationship between the plaintiff's participation in the federal elections of 1968 and 1970 ... and his allegations of injury before the Court, involves:

1. the First and Fourteenth Amendments to the United States Constitution and their violation as a result of the plaintiff's participation in federal elections;

2. The Civil Rights Acts of the 1800's and the 1960's and the 1970's, the violation of these laws which:

   a. guarantee to the plaintiff lawful exercise of political action in federal elections; and which

   b. prescribe penalties, civil and criminal, for any interference with or conspiracy to interfere with a campaign for dederal office, or a vote for federal office; and which

   c. give jurisdiction to the federal courts over irregularities or allegations of violent political reprisals for political action in a federal election.

3. the admission and evaluation by a federal court of allegations of injury due to participation in a federal election.



4. the allegations that political reprisal took the form of criminal surgery designed to

   a. to cause gradual and continuing failure of body muscle tone due to castration;

   b. to cause the body, deprived by castration of strength and energy, to rely solely upon the nervous system to promote mental alertness and body body activity;

5. The instrumentalities used to accomplish the alleged wrongdoing were supplied and paid for by funds provided and authorized by federal law, i. e. hospital construction funds, costs of operating room equipment, and medical teaching facilities and staff.

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Now comes the plaintiff to move the court to employ the above jurisdictional grounds in order to continue the pre-trial proceedings in this case.

The plaintiff's allegations of wrongdoing to his injury are too extraordinary for the court to ignore to the detriment of the plaintiff and, more important, to the court's interest that lawful behavior prevail in the conduct of licensed professions.

The court's appointment of physicians as court officers to examine the plaintiff would best serve the ends of a society governed by a respect for a body of law that punishes or protects without reference to position or privilege.

The Court's powers of investigation here are virtually unlimited and would not be prejudicial to any party in pre-trial proceedings designed to establish the truth.

In this case the plaintiff's allegations, if false, should finally be set aside by the court to protect the defendants. That the allegations could be true makes it imperitive that the court intervene to protect the plaintiff from further injury.

The plaintiff's allegations of injury are particularly offensive to our sense of justice and fair play because such injury could not be accomplished without a suspension of law and ethics governing the behavior of professional people.

No one politician, no single vindetta could enlist the active participation of so many physicians and hospital staff personnel in the castration of the plaintiff.

The plaintiff believes his political views as expressed in recent federal elections, views offensive to religious groups, have prompted organized religion and affiliated groups to conspire to suspend the plaintiff's protections under the U.S. Constitution and under the laws of the United States; the defendants in this case are all past performance honorable professionals, leading the plaintiff to conclude that they are mere tools in a conspiracy of organized religion.

The fact of conspiracy must be argued to, must be sought through an investigation of all the circumstances surrounding a criminal act. Few conspiracies are uncovered by the declarations of participants.

A judicial finding of conspiracy is derived from an investigation into a felony, in an attempt to establish a common plan of the participants to feloniously injure an individual or society. The court has the power and obligation to investigate the allegations of injury.

Owen F. Lyons pro se



## Statement Of The Case

The District Court's Memorandum and Order and the Appeals Court's decision affirming, both assiduously avoid mentioning the atrocities alleged. The finding of the courts below that the allegations concerned an ordinary malpractice case completely fails to distinguish the nature of malpractice from atrocity.

Malpractice is a negative concept indicating consequences that are regrettable. Virtually all malpractice cases involve a mistake, a miscalculation, an inadvertance or incompetence; included here are the unnecessary operations for gain.

An atrocity is committed without regret or an interest in money. It is calculated to terrorize all those who have knowledge of the harm suffered by the victim, the object lesson. An atrocity is designed to spread fear, warning the brave and nonconformist that unbridled, and illegal power exists to physically injure them.

The appellant's allegations of being castrated and having his nervous system laid bare to subsequent torment are beyond the working rationale of the most cynical and greedy physician. It is doubtful that the respondent physicians would have committed this atrocity if left uninfluenced and unconstrained by political and religious power from outside the profession.

Terrorism is the ultimate weapon of the politically motivated whose power and influence over the critical is blunted or nonexistent

within legitimate democratic processes.

In order to ruin the professional and sensate life of the appellant, a political gad-fly, the respondent physicians undertook a painstaking, laborious operation requiring great skill and technique.

As one of the appellant's students commented in a hushed classroom, to the appellant's astonishment, "Ya, they really messed you up, didn't they." This comment was offered when, to his students, the appellant characterized the post-war division of Germany as "the castration of a defeated nation." The presence of their teacher had communicated a dreadful lesson indeed.

It is then a tongue-in-cheek misrepresentation of the calamity visited upon the petitioner for the lower courts to dismiss his allegations as a simple malpractice case.

The surgery here, cleverly concieved, and executed with extreme cruelty and malace by physicians licensed by the State, left the petitioner deprived of the economic and social foundations for the life he had prepared for in this society.

The findings of the courts below concentrated their attention on the June, 1976, motion to amend jurisdictional grounds as applied to the 1975 October amended complaint, ... setting up thereby a straw man to shoot full of holes. Only by ignoring the interrogatories and amended complaint filed in February, 1976 , could the courts below present their findings of "no jurisdiction." The District Court used silence to bar the admission of the February documents;



the Appeals Court cited the Rule that left it up to the discretion of the District Court whether to allow the February amended complaint, i. e. if the court found nothing new or important in the amended complaint , no new allegations which would indicate federal question jurisdiction, there was no need to allow amendment. Unmentioned, however, was the propriety of the District Court's use of silence to bar the complaint. Evidently the introduction of the petitioner's castration as allegations in the February amended complaint would have made it difficult to dismiss as a simple case of malpractice unconnected with the petitioner's campaigns for Congress.

The Appeals Court recognized nothing irregular or unethical for the District Court to hold the case in suspension from October 1975 to May 1976, even though the Statute of Limitations bared, therby, the introduction of an original complaint.

Missed also was the footnote in the District Court's Memorandum and Order which dimissed the February amended complaint because, of all things, the petitioner had waved its allegations by not referring to them in his motion to amend jurisdictional grounds.

The courts below treat the June 1976 motion to amend jurisdictional grounds as some kind of trick designed to disturb the tranquility of the court; consequently resort was made to medieval rites of exorcism, to supernatural words as "frivolous!" or "fanciful assertions," casting into oblivion thereby the allegations that the petitioner very probably was injured

because of his campaigns for Congress.

Every issue and argument contained in the petitioner's brief to the Appeals Court must be passed on to this Honorable Court for original consideration

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Jurisdiction In The Court
Of First Instance.

Federal Question, 28 U. S. C. # 1331

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Jurisdiction Of The
Supreme Court

The Constitution of the United States.

Article One, Section Two

First Amendment

Fourteenth Amendment

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## CONSTITUTIONAL PROVISIONS INVOLVED

I. Constitution Of The United States
Article One
Section Two

The House of Representatives shall be composed of members chosen every second year by the people of the several states; ... No person shall be a Representative who shall not have attained to the age of twenty five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

II. First Amendment to the U. S. Consitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

III. Fourteenth Amendment to the U. S. Constitution. Section 1.

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.

FOR
SUPREME COURT
REVIEW

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Petitioner's
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UNITED STATES CONSTITUTION

IN THE
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OWEN F. LYONS, Plaintiff/Appellant

v.

JOHN F. FAGAN ET AL
Defendants/Appellees

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On Appeal From The
United States District Court For The
District Of Massachusetts

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Brief For Appellant

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## STATEMENT OF ISSUE

Whether it is error for the court below to dismiss appellant's pro se complaint, amended complaints and supporting motions because of improper diversity of citizenship, when it is apparent, from a study of these document and from the presiding District Court Judge's knowledge as an adversary party to the appellant's appeals to the U. S. Supreme Court to be placed on the ballot as a candidate for Congress in 1968 and 1970,

that the appellant's alleged castration,
so heinous and offensive,
was probably the result of political reprisal,

and therefore, was a matter within the Court's jurisdiction not requiring diversity of citizenship.



## CONSTITUTIONAL PROVISIONS INVOLVED

I. Constitution Of The United States
Article One
Section Two

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## STATEMENT

On September 12, 1975 the appellant filed his complaint in the Federal District Court claiming federal question jurisdiction because he

believed that his civil rights were violated by criminal surgery during a hernia operation.

The appellant was in a state of great anguish and outrage because a doctor's comment together with notations in his hospital record indicated that the operation was designed in some way to make him female.

The appellant believed that the illegal surgery was a denial to him of the Fourteenth Amendment guarantees of equal protection of the law.

At this time he had no idea of why the physicians would injure him; indeed he had no clear idea of what the surgery altered and he could not find out from physicians or anyone else, although for a year the appellant was certain that everyone knew he was dying of cancer. Now he believed that this knowledge pertained to the operation, not cancer.

Following the filing of the September complaint the appellant was plagued with ailments involving excessive urination, constipation, diarrhea, unsolicited and upsetting sexual sensations in his buttocks when in restaurants or out walking, and the frightening appearance of a white waxy substance covering the penis glans.

The appellant feared that all of these physical discomforts were, in covert way, being caused by individuals because he had filed the complaint.

In an attempt to put a stop to this malicious mischief the appellant made numerous motions to the court for examination by court appointed physicians. The court ignored these motions without explanation, and did so despite the appellant's expressed fear of injury by violence.

The appellant amended his complaint in October in order to secure diversity of citizenship jurisdiction by the addition of a California defendant and, thereby, eliminate the need to proceed on the basis of the Fourteenth Amendment.



This was followed by several months of fitful efforts to move the court to command that the summons and complaint be served on the defendants, appeals that went ignored.

The appellant believed that service had to be completed before he could submit his Interrogatories to the defendants. Service of the complaint was complete around the last week in December and the appellant began to prepare the Interrogatory.

For a month, without the aid of a physician or one knowledgeable in human physiology, the appellant struggled to put together a coherent questionare. To his horror the appellant concluded that the defendants had castrated him. This would soften the body and thus explain the various allusions to a sex change.

This discovery came only weeks before the February 8 deadline for the Statute of Limitation.. The appellant suspected that any complaint containing the allegation of castration had better be submitted before the Statute of Limitation cut off date. So the interrogatories were submitted on February 4 and the amended complaint on February 5.

In his dispair the appellant concluded that such barbarism had to be at the instigation of persons with awesome power, political and religious, in order to be able to command the silence of everyone who knew the appellant. In the interrogatories the appellant outlined the reasons why he would be so grievously injured, i. e. the political campaigns for congress in 1968 and 1970. The allegation of castration was introduced in the February 5 amended complaint together with the tell-tale signs supporting this allegation, i. e. the "cave-in" of the body under each rib cage and the "bulge" of the abdomen below.

A flurry of motions by the defendants requesting the court to protect them from having to answer the interrogatories were filed. The court remained silent on all motions from both sides until the May 12 Notice of a hearing on motions to dismiss was issued.

The one and only hearing was held on May 20 and took five minutes to conclude, the main business being a reading of a case explaining the technical meaning of diversity of citizenship.

On June 11 the appellant motioned for leave to file an amendment invoking federal question jurisdiction; this motion elaborated on the allegations of possible political reprisal due to the congressional elections of 1968 and 1970 by means of castration as set out in the interrogatories and the February amended complaint.

It is this June 11 motion and the court's Memorandum and Order dismissing the claim of federal question jurisdiction which brings the appellant to the Court of Appeals.

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ARGUMENT I.

> The allegations of a pro se complaint are held to less stringent standards than formal pleadings drafted by lawyers, HAINES V. KERNER, 404 U.S. 519, 520, (1972), and may not be dismissed unless it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief", CONLEY V. GIBSON, 355 U.S. 41, 45-46 (1957).

The words of the above argument were taken from the District Court's July Memorandum. The appellant contends and will argue that the above admonition and guide was overlooked by the court in this case.



ARGUMENT II.

> Appellant claims federal question jurisdiction because he became a victim of violent reprisal for his participation in the congressional elections of 1968 and 1970.

The appellant's case rests upon his having suffered an unspeakable atrocity which he attributes to his exercise of constitutionally guaranteed rights to seek elective office in Congress and to exercise freedom of speech in the course of a congressional campaign.

If the appellant did seek congressional office in 1968 and 1970, and political reprisal for participation in these elections is a possible explanation for the alleged castration of the appellant, then federal question jurisdiction is clearly established.

To rule otherwise is to deny to the appellant his only opportunity to establish the truth of his allegations through the federal court's Discovery Procedure of appointing physicians to investigate the allegations.

ARGUMENT III.

> Appellant found that both criminal and civil action in state courts is impossible without expert testimony by physicians.

The first lawyer contacted by the appellant wastaken ill during the interview and the appellant had to look for another. In confusion and shock at being told that the sexual sensations in his buttocks was normal female sexuality, a medical opinion which was supported by clear allusions found in his hospital records, the appellant was, perhaps, too emotional for the lawyer.

An experienced lawyer specializing in malpractice cases was brought into the case by the appellant's brother. In response to the

appellant's wish to file a criminal complaint, the new lawyer explained that punishment of the doctors would not make the appellant whole, that no doctor would testify in a crinimal action against a fellow doctor, and consequently a criminal action would be a futile effort.

The only reasonable approach, said the lawyer, was to proceed with a regular malpractice suit in which relief could be secured in money awards. It was agreed and the lawyer was to arrange a medical examination with a physician upon whom he relied in bringing malpractice cases.

A few days later the appellant received a call from his brother who told him that the lawyer could not arrainge a medical examination, that the appellant should go incognito to some doctor and try to secure a signed statement of that doctor's findings.

The appellant knew that doctors simply do not issue such statements that might be used in a malpractice case. But he did call several hospitals where records of all business are kept and are by law easily accessable.

Hospital staff doctors were asked if they would make an examination of the appellant to verify or disprove his fears of surgical manipulation. The doctors replied that they were not available for such probes, that they would, however, treat the appellant for any particular illness. The appellant was not ill.

In a visit to a doctor in South Boston the appellant was told that doctors simply could not get involved with another doctor's patient over malpractice.

At this point the appellant resigned himself to the fact that no help wo uld be forthcoming from doctors or lawyers, that without their help the defendants were placed beyond the reach of the law no matter what crime they committed.



ARGUMENT IV.

Appellant has the right to commence medical malpractice action in federal court with reliance upon the testimony of court appointed physicians.

In his study of possible federal court action the appellant discovered, to his surprise, that a malpractice action could be brought in federal court. More to his wonder, he found that in such an action the plaintiff had to submit to examination by court appointed physicians, a pre-trial Discovery procedure to establish the truth of actual injury as alleged in a complaint. The appellant thought his problems were solved.

If the appellant has presented the court with a set of facts alleging that deliberate and extraordinary violence was suffered and was probably the result of his campaign for election to congress then the federal question jurisdiction is invoked requiring the court to set the Discovery proce - dures in motion, at least.

Such a situation is quite different from one where the assertions calling for federal question jurisdiction have no foundation in fact, assertions that have no cause and effect relationships so as to reasonably say the result is probable. Here, on the other hand, there is no other explanation for the savagery suffered at the hands of otherwise reputable physicians than to see reprisal at the behest of others and as punishment for activity in the congressional elections of 1968 and 1970.

It is true that the appellant set forth no grounds for federal jurisdiction in the September and October complaints. It is equally true that federal question jurisdiction is apparent in the February complaint and interrogatories, and is elaborated upon in the June motion to amend jurisdiction , the introduction of which the court allowed.

ARGUMENT V.

Appellant had the right to choose between a malpractice action where the requirements seemed easy ( $ 10, 000 amount plus diversity) and action on more difficult constitutional grounds.

The appellant found the requirements for bringing a malpractice suit in federal court to be deceptively easy, i. e. a case involving more than $ 10, 000 and diversity of citizenship.

Appellant was asking far in excess of $10, 000. He believed the diversity requirement was met with the inclusion of Dr. Miner of California as a defendant, the doctor who introduced the idea of female sexuality in explanation of the appellant's concerns.

To proceed on grounds of violations of federal law and constitutional guarantees would require the appellant to assess and asign blame to others in addition to the defendants. At this time the appellant was too preoccupied with his own injuries to see any conspiracy beyond that of the doctors.

ARGUMENT VI.

Injury in retribution for participation in federal elections is violative of federal law, constitutional guarantees, and civil rights.

The appellant soon reasoned to a conspiracy beyond the operation itself, i. e. retaliation for activity in the congressional elections of 1968 and 1970. He was certain that the federal courts had the power to punish violations of federal law, constitutioal guarantees, and civil rights. He reasoned that all problems cropping up in the course of a federal election, or its aftermath, were in the perview of the federal courts.



Even if the appellant offended some in the course of those elections by what he said, this was a legitimate exercise of free speech as guaranteed by the First Amendment of the U. S. Constitution.

If he was deliberately harmed for his pronouncements and for looking to the court to aid him in securing a place on the congressional ballot, then this was a matter to bring to the federal courts.

The appellant's right to run for the U. S. House of Representatives is constitutionally guaranteed. If he was harmed because he exercised this right, then it is the business of the federal courts. Article I, Section Two of the U. S. Constitution guarantees the right to run for the U. S. House of Representatives.

The appellant believed also that civil rights laws protecting the right to vote probably embraced all aspects of federal elections and was within the provence of the federal courts.

ARGUMENT VII.

Appellant knew that the injuries suffered was punishment for tactics and positions taken as a candidate for congress.

The only explanation for a sex change operation is punishment by individuals who fancy themselves offended by the appellant's activity as a candidate for Congress.

To the toughs responsible for the operation, thugs whose only claim to manhood is their genitals, and whose scorn for female gender is obvious, the castration and nerve manipulation to simulate female sexuality was the most manly way they could think of to destroy an opponent.

The appellant's effort to have his name placed on the ballot in 1968 and 1970 had a very good chance to succeed through a federal court order requiring that his name be placed on the ballot.

This would have brought the appellant to the attention of the public in a way that could bring about his election. It would have been a singular embarrassment to the incumbent congressman who, otherwise, was running unopposed.

In newspaper advertisements the appellant attacked the incumbent for his opposition to the development of hydro-electric power for New England which was paying the highest rates in the nation for electric power.

The appellant lost possible support by saying to Jews in his district that billions upon billions every year in support for Israel could not long be justified, that Israel would have to come to an accomodation with its Arab neighbors, that the vital interests of the United States lie with the Arabs and their oil.

The appellant citicized the incumbent congressman for his support for the Viet Nam war and for his obsequious support for the Zionist lobby in Congress.

The incumbent congressman was outspoken in his support for aid to parochial schools and he personally blocked bills to aid education that did not include aid to parochial schools. The appellant was outspokenly critical of the congressman for these tactics.

In short the appellant succeeded in opening up a veritable hornets' nest of formadable foes.

ARGUMENT VIII.

> Everywhere denied legal and medical assistance the September complaint and the October amended complaint were inadequate because the plaintiff did not know exactly what was done to him, or why, and nobody was telling.

Gripped by great emotional stress upon learning from defendant Miner and the hospital records



late in August, 1975, that in some way he was the victim of a sex transversal operation, the appellant's September complaint and October amended complaint were desperate attempts to find out through court appointed physicians what was done to him and why.

Family, friends, doctors, and lawyers all assured him that nothing more than a hernia operation was performed. These reassurances and urgings to visit a psychiatrist made the appellant determined to bring the matter before the courts where reassurances would be replaced by testimony under oath.

Slowly the appellant realized that the defendants would not deliberately and painstakenly injure him for inconseqential reasons, and wouldn't dare do whatever they did do without complete assurance that the appellant would receive no aid, moral or technical, and would be systematically excluded from any redress at law.

Only after the October amended complaint did the appellant suspect that the defendants had the support of not only politicians whom he had opposed but also of leaders of organized religion and their affiliated organizations which he had offended in his congressional campaigns.

ARGUMENT IX.

> In support of his motion to amend to federal question jurisdiction was a set of facts, not fanciful assertions, assigning the reason for castration to retribution for participation in federal elections.

Argument VII is an amplification of those facts on the appellant's involvement in the congressional campaigns in 1968 and 1970. These facts concern matters of great moment and of vital interest to the nation.

These facts are not, surely, fanciful or frivolous. To so characterize them as such speaks to the obscurity of the person who makes them, an inconsequential school teacher who, however, is distinguished by three academic degrees, one of which is a doctorate.

Argument VII shows that the appellant used tactics and made pronouncements that very well may have unleashed passions in society, forces who instgated the cowardly attack on the appellant's integrity as a man.

Castration of a man is just short of murdering him. The very enormity of such a crime, today unknown in the most repressive societies, must speak to the awesome power and influence of those who could pervert the profession and practice of so many physicians.

The castration took place in 1973, a time in our history when madness gripped the nation, when even the power of government was being bent to bring down innocent individuals. It is not far-fetched for the appellant to claim that, due to his congressional effort, he too became a victim of this madness.

ARGUMENT X.

> A set of facts supporting federal question jurisdiction is found in the Interrogatories which the District Court ignored in denying the motion to amend to federal question jurisdiction.

The following page 66 of appellant's appendix supports his claim that participation in congressional campaigns was the reason for suffering subsequent injury:

# 109.
Dr. Brown describes the plaintiff as having "a fair amount of paranoia", (correct to "a fair



amount of paranoid ideation" , Ed.)
A main characteristic of this psychosis is delusion, which usually begins with a feeling of persecution.

Is it a delusion for the plaintiff to think he is well known in his community for 20 years of political activity such as:

a. candidate for city council and state representative;
b. two efforts to win a place on the ballot as a candidate for Congress in opposition to Zionist control of U.S. foreign policy, and in opposition to the Viet Nam War.
c. organizer and political writer in a 15 year effort to change the City Charter.

# 110.
With this political background as antagonist to many established political machines and personalities, might the plaintiff have ample reason to be more alert and guarded than others who have not had such political involvement.
# 111.
Might the plaintiff reasonably conclude that the malace required to mutilate his anus ring so that it would appear as a vulva, was the result of the influence of a powerful but perverted political enemy.
# 112.
Might the plaintiff conclude reasonably that the surgical exposure of nerves in his buttocks so as to feel sexual excitement was part of a continuing conspiracy against him by some who fancy having been offended by the plaintiff's political activity.

ARGUMENT XI.

> The above set of facts showing federal question jurisdiction is collaterally supported in the interrogatories which portray a continuing conspiracy to injure the appellant,

The following questions indicate that the surgery was but the first installment of a continuing conspiracy to cause emotional and spiritual breakdown in the appellant.

On appendix page 67.
# 115.
Would it be paranoid to believe that the sex sensation was designed to occur as regularly as a bowel movement and would gradually unnerve the plaintiff, making him emotionally unstable and erratic or immoral in behavior.

On appendix page 68.
# 118.
In the plaintiff's letter to Dr. Miner he tells of two occasions in June, 1975, when he visited a public lounge and was served liquor that caused him feelings of sexual excitement in the buttocks, sensations similar to those experienced in the early morning hours of each day.
Was it paranoid for the plaintiff to believe th at something was surgically altered in his buttocks which could be readily activated by a drug?

a. Was it paranoid, at this point, to believe that the surgical alteration in his buttocks was performed to make him, his feelings and emotions, the subject of easy manipulation?
b. Was it paranoid to believe that the druged drink and its afftects were designed to outrage the plaintiff into makeing a public scene of accusation, anger, and violence, (i. e. the behavior of a paranoid schizophrenic.)

NOTE:
Appellant now realizes that the drinks had no drug in them. Rather, such sensations in the buttocks are caused by stimulae transmitted to the eyes or buttocks, causing activation of the nerves



in the buttocks, i. e. the inferior mesinteric gang lion.
Appellant believes that the transmission of the stimulae is by mechanical means and seem to consist of waves of some kind, electronic or microwaves perhaps.
In order to make the appellant think his food or drink is poisoned or druged, (a paranoid delusion) the stimulae is transmitted surreptitiously and often when he eats or drinks something in a public place.
The surface of the appellant's eye lid is marked in several places by what appear to be burns. the nerves in the eye have a direct connection with the whole nervous system in the body.
Since filing his complaint the appellant has had to put protective covering over his buttocks because covertly transmitted stimulae would cause unexpected sensation there, this would happen usually when he was out walking. Large red welts would appear on the buttocks. This summer, after wearing protective cover on the buttocks, the burns on the eye lid appeared and the large red wealts on the buttocks literally covered their surface.

On appendix page 70.
#124.
Is it paranoia to interpret Dr. Brown's hand written not es as advising:

a. exposure of the inferior mesenteric ganglion in each buttock thereby uniting the sensations on both sides of the rectum, i. e. surgery reminiscent of Dr. Guerin.
b. accomplish the deed without detection or punishment through a clever manipulation over two years of the plaintiff's paranoia.
c. There would be a perfect coverup because the plaintiff would be converted into a

hopeless institutioalized psychotic.

ARGUMENT XII.

> The interrogatories and amended complaint (February 5, 1976), both ignored by the District Court, contain allegations of castration which give collateral support to federal question jurisdiction.

Psychiatrists claim that fear of castration is deeply embedded in the human psyche; the terror and horror aroused by threats of castration seems to support this claim.

Actual castration, as alleged, has certainly humiliated and brutalized the appellant. But there is a greater significance to castration in the life of this nation, the most important of which is the introduction of terrorism in the conduct of congressional elections. Knowledge of the appellant's castration has been widely disseminated by the defendants.

The interrogatories, appendix page 54, # 30, 31, 32, address the tell-tale affects of castration. Here the appellant realizes that his prematurely aged appearance must be the result of castration. He had believed he was dying of cancer.

In February, 1976, the appellant did not know how the castration was accomplished but he believed it had something to do with the removal of a tumor from the spermatic cord which Dr. Fagan noted in the hospital record. The absence of a pathology report on this tumor led the appellant to believe that the removal of a tumor was just an excuse to open up the spermatic cord. (Appendix page 62)

On appendix page 63, the appellant underlines the words "the purpose of castration."



Another tell-tale affect of cauterizing the spermatic cords appears in the February amended complaint, # 38 and 39. Here the appellant alleges a "bulging" in the abdomen and a "cave in" on both sides of the body, just above the waist line and under each rib cage. The "bulging" of the abdomen is a result of cauterizing the spermatic cords, separating them from the abdomen, thereby leaving the abdomen without support structures pulling the abdomen firm and flat.

The "cave in" refers to the sites where cauterization took place. The amended complaint alleges deprivation from the upper body of the fluids and hormones produced in the testicles, i. e. castration

NOTE:

After opening the spermatic cord on the pretext of removing a tumor on the cord, a long cauterizing tube (used for cutting and cauterizing fellopean tubes) was shoved through the spermatic cord to the right side under the rib cage, and there cut and cauterized the right spermatic cord. Pulling the tube back, it was easy to cauterize the left spermatic cord.

ARGUMENT XIII.

> Appellant motioned to change jurisdictional grounds in order to continue pre-trial procedures, not for the sole and frivolous purpose of securing federal jurisdiction.

Upon learning simple diversity was not enough the appellant sought to continue pre-trial procedures through his June motion to amend to federal question juisdiction. He could not submit a corrected complaint because the Statute of Limitations had run.

ARGUMENT XIV.

It was improper for the District Court Administration to assign the appellant's case to the same Judge who had been assigned two previous cases brought by the appellant.

It is the appellant's understanding that Judges are assigned cases by the drawing of lots. It is improbable by all the laws of chance that the same judge should be picked by lot three times to hear three different cases brought by the appellant.

ARGUMENT XV.

It was judicially indiscreet for the District Court Judge to accept the assignment of a third csse brought by the appellant when in the two previous cases this same Judge was the adversary party in the appellant's appeals to the Supreme Court seeking to be placed on the ballot in 1968 and 1970 for the U.S. House of Representatives.

The district court judge knew or should have known that actions taken by his court detrimental to the appellant would be viewed with suspicion. In this case the unseemly delay by the court and dismissal of the case based on a selective portion of the appellant's allegations, would surely place in question the court's possible prejudice, bias, and antagonism towards the appellant's cause.



ARGUMENT XVI.

By inordinate delay permitting the Statute of Limitations to run out, the District Court unethically forestalled the submission of a corrected complaint.

The District Court's Memorandum and Order says the May Hearing considered only the October amended complaint. Because this complaint was defective on its face due to improper diversity of citizenship, it was dismissed.

This one and only Hearing came eight months after the October amended complaint was submitted. The Hearing was a judicial sham, consisting of nothing more than a reading of the technical meaning of diversity.

In the normal course a complaint that is defective on its face is simply dismissed without benefit of Hearing. In this way the plaintiff is given the opportunity to resubmit a corrected complaint and, consequently, his case is not prejudiced by delay.

A timely dismissal of the October amended complaint then, in November, or December, or January, would have allowed the plaintiff to prepare a new complaint with sound grounds of jurisdiction, and before termination of the case by the Statute of Limitations on February 8.

But the District Court for mysterious reasons chose to wait for eight months to inform the pro se plaintiff that simple diversity was not enough.

The numerous motions for examination by court appointed physicians because of the appellant's fear of injury by violence were the court's occasions to dismiss; by the court's silence in in response to these motions is evidence that the court had other plans for the complaint.

It is with regret for one with unshakeable respect for the nation's courts to have to

conclude that the complaint did not receive timely dismissal because the district court wanted to hold the case long enough for termination by the Statute of Limitations.

ARGUMENT XVII.

The District Court deceptively led the pro se plaintiff to believe that the complaint was adequate and the case had reached the pre-trial stage.

The court took positive steps of judicial action which led the appellant to believe that the complaint would or had withstood the motions to dismiss which the court ignored for five months.

The indicia of judicial action, interest and consideration took the form of:

I. The court's denial without explanation of the plaintiff's motions:
   (a) for examination by court appointed physicians, September 16, 1975.
   (b) for court ordered medic al examination, October 3, 1975.
   (c) for protective custody of the court for purposes of medical examinations , October 6, 1975.

   The court's denial of these motions came on November 19, 1975, a full month after the submission of the October complaint which the court considered exclusively in its decision to dismiss.

II. The court's admission of a late-file of defences, January 13, 1976.

III. The court's silence on the submission of interrogatories, February 4, 1976. and amended complaint, February 5, 1976.



IV. the court's silence on the defendants' motions:
   1. to stay time within which to answer the interrogatories, on February 12, 18, and 26.
   2. opposition to allowance of amended complaint, on February 18.
   3. motions to strike complaint, amended complaints, and interrogatories as scandalous and indecent, February 26 and 27.

Until the end of April, 1976, by all appearances, it seemed to the pro se plaintiff that the motions to dismiss contained in the defendants' answers were, by the court's silence, effectively denied. It came as a shock some six months later when the court called for a Hearing confined to motions to dismiss.

ARGUMENT XVIII.

To the appellant's prejudice and in violation of the Rules of Civil Procedure, the court permitted the defendants to ignore the interrogatories which were submitted by right without requiring leave of Court.

On February 4, 1976, the appellant submitted his interrogatories which was his right under the Rules of Civil Procedure and which did not require permission of the court to submit. Twenty or Thirty days from the time of receipt is allowed the defendants to answer.

Rather than answer the interrogatories the defendants unleashed a flurry of motions to strike and for Protective Orders from the court. The court ignored these motions in opposition to their obligation to answer and with the court's silence

the defendants did not respond to the interrogatories.

The last motion requesting the court to relieve the defendants of their obligation to answer came on February 26, 1976, and the Notice of Hearing to dismiss is dated May 12, 1976. This is a period of more than 70 days in which the defendants refused to anser the interrogatories, doing so by virtue of the court's silence.

This refusal to answer was prejudicial to the appellant's cause and was tolerated by the court to the appellant's detriment.

ARGUMENT XIX.

It was improper for the court to use the June Motion on jurisdiction to dismiss the February complaint which was treated as non-existent until the court's Memorandum and Order .

Invoking the doctrine of incorporation by reference in a novel way, the district court concluedes that the June motion to amend jurisdictional grounds was a waiver of the allegations contained in the February amended complaint.

On the contrary, the June motion claiming federal question jurisdiction effectively incorporated all the allegations previously submitted to the court.

The allegations implicit in the February interrogatories and the allegations of atrocity by castration in the February complaint set out a body of fact which laid claim to federal question jurisdiction. These facts in the February interrogatories and complaint are elaborated upon in the June motion on jurisdiction.



The district court in its July Memorandum and Order admits that the federal question jurisdiction was invoked in the September and October complaints. The court is correct in pointing out that these two complaints did not contain a body of facts supporting federal question jurisdiction.

If the claim of federal question jurisdiction was blindly invoked in the September and October complaints, the February complaint also invoked federal question jurisdiction . Taken together as the appellant claims they should, the February introduction of Interrogatories and complaint clearly set forth allegations which support his claim to federal question jurisdiction.

ARGUMENT XX.

Confident that the law protected them from punishment for unspeakable mayhem, and certain that their victim would be left naked and humbled by the same law, the defendants and their allies proceeded to publish and broadcast their triumph to the community at large.

For more than two years the appellant watched what he thought were the signs of certain death from cancer, i.e. the premature aging in the face, the loss of body muscle tone, the fatigue, the sexual stimulation in the buttocks, and the knowing smiles of pity from family, friends, students, and professional associates.

The first realization that all of this had to do with an operation designed to change his sexual behavior, came to the appellant in his visit to defendant Dr. Miner who explained that there was really nothing wrong with him, that the things

complained about were nothing more than females often experience.

The next shock came from his brother in California who thought it advisable to warn the appellant not to fool around with his teen-age children.

The next shock came with a reading of the defendants' comments in the hospital records.

It is clear to the appellant that the hospital records and their allusions to a sex change were used to start the grapevine going. The records are handled by many employees in typing, filing, and recording; there is no doubt that much titillating amusement was had by all and it was not long before the contents of the records, knowingly published in this way, were communicated to the larger community.

The operation itself, no doubt, was a big drawing card; the obvious procedures necessary to alter nerves and castrate the appellant must have been of absorbing interest to hospital workers, visiting doctors, assisting technicians, nurses, interns, all watching transfixed at the undoing of the victim. More important, these people served the purpose, i.e. the communication of the atrocity to the community at large.

The intended result would be to isolate the appellant from friends and neighbors who would shun association with one so afflicted and humiliated and innocent of the damage done and the continuing ravages of his body.

So effective was this publicity campaign that life guards all over Cape Cod would make close-up observations of the appellant in a curious but unsmiling way. (see appellant's appendix, pages 21 and 22.)

In various ways, subtle and outspoken the appellant's high school students indicated their knowledge of the castration, which to them is inconcievable. They were sympathetic but, of



course, there were the cat-calls, "Dr. Lyons, I got a hernia!"

## CONCLUSION

The appellant requests this Honorable U.S. Court of Appeals to reassign this case to a new District Court Judge and order that pre-trial procedures begin at once.

The appellant recognizes real danger to his safety because of this case. He requests, therefore, the U.S. Court of Appeals schedule this case for a hearing at its earliest convenience.

The appellant requests further, that this Honorable Court take whatever action in this matter which it deems meet and just.

signed: Owen F. Lyons, pro se

## AMPLIFYING ARGUMENTS

ARGUMENT 1.

Whether a continuing criminal conspiracy within federal jurisdiction is established by illegal surgery ... performed in two stages, 18 years apart, and designed to make a male's rectal area a vulva in appearance and sensation, ... when the first stage of the operation was performed by federal employees in a federal hospital.

In 1957 or1958, following his political campaign for the Cambridge City Council, the petitioner went to the Veterans Administration Hospital (Boston) for surgery to correct a fissure in his anus ring, a service connected injury in that a minor operation was performed on a bleeding hemorrhoid by a Navy physician during the petitioner's military service (1953-1955). The petitioner was first inducted into the Naval Reserve for several months orientation service and basic training following high school graduation in 1949.

In 1975, eighteen years after the fissure operation at the V. A. Hospital, the petitioner found out that the V. A. doctors had mutilated his anus ring, removing it and fashioning in its place the appearance of a vulva.

The only explanation for this criminal mischief was retaliation for the appellant's campaign for the City Council; the incredible aspect of the story is that a perverted political hack could reach into a veterans hospital



to satisfy his unnatural passion. The amusing part of the story is that the petitioner remained, for 18 years, completely innocent of what had been done to him.

In 1973, following two campaigns for the U. S. House of Representatives, persons knowledgeable of the mutilation decided to complete the job by bringing sexual sensation to the area already made to appear as a vulva. By the surgical manipulation of nerves in the buttocks, nerves which serve to transmit sexual sensation to the penis, the defendant physicians made the petitioner's rectal area a vulva in sensation as well as appearance.

The same perverted passions present following his campaign for City Council prompted the 1973 operation, i. e. criminal retaliation for the petitioner's campaigns for Congress in 1968 and 1970, elections which were perhaps the most impassioned in modern American History. The political issues involved no less than war or peace for the United States and Viet Nam, elections when the war hawks could no longer ignore popular opposition and minor irritants like the petitioner who presumed to oppose incumbent power.

The petitioner contends that the criminal surgery begun in 1957 in a federal hospital was continued and concluded in 1973. Both operations have the same motivation, i. e. hatred and vengence for the trouble the petitioner caused by standing for election in defiance of incumbent power. The assault in both operations was on the petitioner's manhood and the retaliation, in both cases was the most vicious and permanent kind, surgical mutilation.

Both operations were directed at the same subject matter, the petitioner's rectal area. The surgery performed by federal employees and private physicians licensed by the State accomplished one transaction, the conversion of the petitioner's rectal area into a vulva in appearance and sensation.

The Statute of Limitations served to bar, for a time, prosecution for the first act of mayhem by federal employees. But this defense was lost when private physicians resumed surgery on the rectal area.

In short, federal jurisdiction is established over this continuing conspiracy to injure the petitioner by means of illegal surgery performed by federal employees in a federal hospital, surgery which served to prompt and encourage subsequent surgery on the same subject matter with the same general purpose and intent.

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ARGUMENT 2.

Whether it is a deprivation of liberty by a State without due process of law, when State agents licensed by the State to practice medicine expose a person's nervous system, so that he is no longer in control of the normal and healthy neurological and physiological functions of his own body.

Neurological testing will show that the petitioner can be aroused to a high state of excitement and agitation by a heat stimulous applied to his buttocks and eyes.

Testing will show that heat stimulae



when transmitted at high intensities can overwhealm the petitioner with fatigue or the need to sleep.

In his complaint the petitioner cites the excretion of large whole stools measuring 10 inches and more in length. Neurological testing will show that stimulae when directed at his mid-section causes the constriction of abdominal muscles, thereby causing the formation of extraordinaryily long stools in the large and small intestines.

When stimulae is delivered at high intensities to his mid-section constipation by unmanageably large stools results.

A medical probe following initial procedures used in a colostomy in order to bring to view through the rectal opening the inner movable parts of the buttocks, will show the rearrangement of the nerves necessary to a male's sexual functioning.

Neurological testing will show that the normal function of excretion, especially as it occurs following a night's sleep, causes the sexual sensations associated with the penis to be present in the buttocks on both sides of the rectum. Further testing will show that the sexual sensations centering in the buttocks affects the sensations in the legs, body trunk, and arms.

Testing will show that when the petitioner sits in driving position while driving his car, the exposed nerves in his buttocks become numb causing the petitioner to lose the consciousness and alertness necessary to drive carefully. This condition is the result of castration, i. e. fatigue, and the absence of mental and physical alertness.

The exposure of the nerves in the buttocks to stimulation from inside and outsidethe body is a necessary remedy and cover-up of the castration.

In short the petitioner's freedom of travel by driving his automobile is severely restricted to trips of no more than an hour's duration because of his castrated condition.

The affects of analgesic tablets on the body's nerve endings is a pathological condition. The nerve endings in the skin portion of the penis just below the penis glans becomes ulcerated by the use of an analgesic.

The affects of the analgesic on a sore and troublesome callous on the sole of the petitioner's right foot caused the callous to wear away, thus reproducing the hole left by the removal of a "plantar's wart." In 1975 the doctor who first detected the hernia used a cauterizing machine in his office to remove the wart. However it seems that the doctor removed a foot muscle instead. This has caused the petitioner to limp. More important the severed nerve endings surrounding the hole by the removal of the muscle has become another site which, by the application of heat stimulae, activa tes the center of the exposed nerves in the buttocks and, in turn, the sexual sensations there.

The exposure of the petitioner's nervous system to covert manipulation of his feelings, and emotions, amounts to a deprivation of his "liberty" without due process of law. Such deprivation is the consequence of surgery performed by agents of the State who are licensed by the State to practice medicine.



Because of illegal surgery the petitioner is restricted in his activities and travel just as effectively as if he were in the custody and coercive control of the State.
Out of fear of exposure to covert manipulation of his behavior the petitioner no longer participates in the civic, social, educational, or political affairs in his community.

Only to attend to daily necessities and his teaching duties has the petitioner left the refuge of his home over the past two years.

The petitioner recognizes that this situation is the contemplated plan of action referred to in his medical records in the notation "fair amount of paranoid ideation"; in other words, by the manipulation of his exposed nervous system, the petitioner's paranoia would be easily exploited so that he would display all the symptoms of the paranoid schizophrenic. This would serve as the defendants' defence when, sooner or later, the petitioner began to complain about what was happening to him.

The consequences of the surgical alteration of the petitioner's nervous system has deprived him of the "liberty" he relies upon to influence the lives, the thinking and understanding of his students and fellow citizens. Illegal surgery has impaired his power to control his emotions and sexual stemulations by rational thought.

This is a deprivation of the liberty envisioned by the 14th Amendment, an abridgement of his freedom to communicate ideas with controlled emotion in order to influence his students and fellow Americans.

The "liberty" asserted in the 14th Amendment is not a negative concept, not simply the absence of confinement by a State without due process of law. Liberty is the freedom to use one's God given powers to guide the direction of the nation to serve the best interests of its citizens. This is the historic meaning of "liberty" to Americans, an idea which continues to shape our lives and institutions.

More than freedom to think, "liberty" is the freedom to be moved to emotion and action in response to thought and speech. It is the compelling force which drove the Founding Fathers, men of conservative thought and moderate temperament, to rebellion and revolution. Under great emotional stress, in fear for their lives, these thoughtful men produced the Declaration of Independence and the Constitution in the name of "liberty".

Liberty, then, is vital to American life and society, and especially so in the form of freedom of expression in political affairs. Even if assasination ends the political appeals of a fellow citizen, the liberty he relied upon to influence others continues to find expression in the working constitutions of Americans who heard and believed.

The controlling interest in the petitioner's life, in his study, teaching, politcal activity, and personal behavior, has been the constructive use of liberty. Surgery which has permitted others to interfere with his life and teaching, by inducing emotional states unrelated to his thought and speech, is a deprivation of the petitioner's liberty without due process of law by agents of the state licensed to practice medicine in that



State; it is medical practice of frightful depravity. Surgery intended to impair his physical strength and appearance, his mental consciousness and alertness, is an unlawful abridgement of his freedom of travel and participation in the petitioner's community affairs. The above constitutes a deprivation of liberty by State action without due process of law.

"State action" here is by the agency of the respondent physicians.

To secure the public health, the State acts through the physicians it licenses. State action necessarily takes place through the vesting of responsibility in public officers or licensees.

"Private practice" of physicians refers only to the fact that they are not salaried public employees.

In short, the injury caused by the deliberate and malicious actions of the respondent physicians is "State action". The purpose of the surgery was to deprive the petitioner of "liberty" without due process of law.

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ARGUMENT 3.

Whether it is a deprivation of a person's "property" by a State without due process of law for its agents (the officials of the City of Cambridge) to force the petitioner to withdraw from his teaching position because of this legal action.

After filing his complaint in September 1975, and amended complaint in October, 1975, the petitioner returned to his teaching duties; he had been on sick leave for several months. The petitioner held classes continuously through June, 1976, the close of the school year.

On orders of the Superintendent of Schools the petitioner was closely observed, frequent appraisals of his personal behavior and teaching performance being sent to the Superintendent by his immediate superiors and teaching supervisors.

At the close of the school year the Assistant Superintendent for Secondary Schools congratulated the petitioner for a job well done.

While performing his teaching duties the petitioner filed another amended complaint and interrogatory in February, 1976. No official of the City of Cambridge made any objection to this.

When the petitioner returned to teach on opening day of school in September, 1976, he was given no teaching assignment. He went to the Superintendent who said he wanted to talk to the petitioner in conference with the Assistant Superintendent for Secondary Schools and the Administrative Assistant to the Superintendent.

At this conference the Superintendent advised the petitioner that he had received very good reports on his teaching in the past year but a complication had developed. The City Manager of the City of Cambridge had visited the Superintendent with a copy of the petitioner's brief to the Court of Appeals.



The City Manager thought that, on the basis of the contents of the brief, the petitioner was not a fit teacher of Cambridge youngsters.

The Superintendent thought, therefore, that the appellant should submit to psychiatric evaluation before he could be assigned to a class.

The petitioner knew that psychiatric evaluations are subjective opinions of a psychiatrist whose findings are scientifically unverifiable. The first suggestion of his doctor when the petitioner began to insist that something was wrong with him was to visit a psychiatrist at the Cambridge Hospital.

The petitioner had often heard that psychiatrists had a license to lie. To submit to a psychiatric evaluation could compromise his tenured status as the school system's highest paid classroom teacher. An adverse report would give the Superintendent reason to ignore the evaluations of teaching supervisors and to dismiss the petitioner for cause.

The petitioner refused to submit to psychiatric evaluation saying he was not having much luck with private doctors of late, and that such a procedure could jeopardize the evaluation of his brief by the Court of Appeals. The petitioner said that his appeal would be successful, in which case Court appointed doctors would soon examine him to ascertain the validity of his allegations of nerve manipulation and castration.

The Superintendent retorted that he had legal power to require his teachers to undergo psychiatric evaluations. The petitioner said that such power could be exercised legitimately only for good cause, and that a court action was not

good cause. The Superintendent said that in the case of the petitioner, where paranoia seemed evident, he had the authority to require periodic psychiatric counselling. The petitioner pointed out that the Superintendent had before him many reports from teaching supervisors covering a year and none reported a case of paranoia which interfered with his teaching. It was these evaluations which the Superintendent should look to in decideing whether to assign teaching duties, thought the petitioner.

The Superintendent said he did not want to force his removal without a psychiatric evaluation. The petitioner finally suggested that perhaps a submission of a request for leave of absence without pay would be a satisfactory, if temporary, solution. This offer was eagerly accepted.

The petitioner contends that his request for a leave of absence was wrested from him by threats of dismissal from his tenured position, that he submitted his request for leave under duress, that the Superintendent's demand for a psychiatric evaluation was not based upon observed behavior and teaching performance, and consequently, was unjustified, and prejudiciously discriminatory.

The only other course open to the petitioner was to accept dismissal and fight the action in the State courts, an action which could take years to resolve, with doubtful assurance of reinstatement, especially so considering the nature of the case.

The petitioner believes that those responsible for the illegal surgery calculated that its end result would be eventual removal from his



tenured position., either through immoral behavior in response to the surgery, or through his efforts to obtain relief at law, or through emotional and mental breakdown.

The petitioner believes that his campaigns for Congress, financed by more than $6,000 of his own savings, was the reason for the illegal surgery. Because of his upright moral behavior and teaching competence all legal avenues for removal were closed. Criminal surgery, however, maliciously conceived and viciously executed, would surely bring about his eventual removal. Ended would be his independent political role and sanctuary of the schools from which he launched his political, if quixotic, campaigns.

When the petitioner returns to the schools for a teaching assignment he will be met with renewed demands to submit to psychiatric evaluation. He will decline because this would give the Superintendent grounds to dismiss him. The petitioner knows that, in any event, he will be denied a teaching post because the nature of his case and the surgery performed on him, have made him an undesirable teacher of the young.

The petitioner contends that his rights under the 14th Amendment have been violated by the respondent physicians and, consequently, by the officials of the City of Cambridge. He has been deprived of property ( salary as a tenured teacher) by State action without due process of law. State action here consists of the surgery by licensed agents of the State, and by the consequent action by the officials of the City of Cambridge.

The demand that the petitioner submit to psychiatric examination does not amount to due

process of law. The Superintendent's lawful authority to make such a demand is conditional authority dependent upon a showing that by the petitioner's personal behavior and teaching performance a psychiatric evaluation was required. The Superintendent's demand was based solely upon this action against the City of Cambridge. The whole case was presented to the District Court during the time the petitioner was satisfactorily carrying out his teaching duties as a member of the faculty in good standing.

Only when this case reached a higher court did the City Manager of Cambridge make his demands on the Superintendent for the removal of the petitioner as unfit to teach. The petitioner believes that the City Manager's demand was made solely to intimidate the petitioner into withdrawing his brief to the Appeals Court.

The petitioner's letter to the Superintendent requesting a leave of absence reads as follows:



OWEN F. LYONS, J.D.
28 Ellsworth Ave.
Cambridge, Ma. 02139
EL4 - 1261

September 9, 1976

Re: LEAVE OF ABSENCE

TO: William C. Lannon
Superintendent of Schools
Cambridge School Department

Dear Sir,

In accordance with our discussions on September 8, 1976, I hereby submit my request for a leave of absence, of indefinite duration, and without pay. Resumption of employment will be at the option of Dr. Lyons. The leave of absence will begin upon the approval of this agreement by the School Committee. Until this approval is received Dr. Lyons will be placed on sick leave.

This action is being taken because Dr. Lyons refuses to submit to psychiatric observation and testing which the Superintendent has made a prerequisite to the continued employment of Dr. Lyons as a classroom teacher.

This action is not to suggest that Dr. Lyons' teaching performance or general observed behavior is less than satisfactory; on the contrary, his superiors find his teaching performance is quite satisfactory.

However, due to his legal action against the City of Cambridge, the Superintendent deems it in the best interests of the School Department to grant Dr. Lyons a leave of absence.

signed: Owen F. Lyons, J.D.

## CLOSING ADDRESS AND REQUEST FOR RELIEF

To The Honorable The Chief Justice
And Associate Justices:

Your petitioner requests that this Honorable Court postpone ruling on this petition pending an investigation of the allegations contained therein.

To this end the petitioner requests that a member of the Supreme Court take the case under advisement and appoint physicians to examine the petitioner.

This extraordinary request is prompted by the petitioner's belief that there is a pervasive fear abroad in Massachusetts regarding this case; it seems especially threatening to members of the bar and the medical profession.

Respectfully submitted,

Owen F. Lyons, pro se

RECORD OF THE CASE

In The

U. S. DISTRICT COURT



TABLE OF CONTENTS

IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS
Plaintiff

v.

JOHN F. FAGAN ET AL
Defendants

CIVIL ACTION
75 - 3845 -M

September 12, 1975

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COMPLAINT

1. The Parties

The plaintiff, Owen F. Lyons, 28 Ellsworth Ave., Cambridge, Massachusetts, 02139, is a resident of Cambridge, Massachusetts, and a citizen of the United States.

Defendant John F. Fagan, 1679 Massachusetts Ave., Cambridge, Massachusetts, 02138, is a physician who practices medicine at THE CAMBRIDGE HOSPITAL, Cambridge, Massachusetts. He is a citizen of Massachusetts and the United States.

Defendant S.N. Mangano, 384 Huron Ave, Cambridge, Massachusetts, 02138, is a physician who practices medicine at THE CAMBRIDGE HOSPITAL, Cambridge, Massachusetts. He is a Citizen of Massachusetts and the United States.

Defendant Brown is a citizen of the United States. He is a physician and practiced medicine in February, 1973, at THE CAMBRIDGE HOSPITAL. His handwritten interview of the plaintiff report of physical examination and Plan is in the plaintiff's medical record at the CAMBRIDGE HOSPITAL, Cambridge, Massachusetts.

Defendant Hospital, THE CAMBRIDGE HOSPITAL, is chartered as a private hospital but is completely dependent on city, state, and federal government for its financing of operations, functions, and personel. THE CAMBRIDGE HOSPITAL, Cambridge St. , Cambridge, Massachusetts, 02139.

2. JURISDICTION

Title 28 U.S.C. Code -- Chapter 85, Section 1331
Chapter 87, Section 1391 (b)

Massachusetts General Laws, Chapter 260, Section 12

3. FACTS

In 1958 plaintiff was admitted to the Veterans Administration Hospital, Jamaca Plain, for surgery to relieve a fissure of the anus ring.

V.A. physicians removed the anus ring and left a simulated vulva.

Defendant Fagan attended to the plaintiff's care for five days following the operation at the CAMBRIDGE HOSPITAL without comment on the mutilation received at the V.A.

On Feb. 6, 1973, defendant Fagan had plaintiff admitted to the CAMBRIDGE HOSPITAL for an operation to correct a protrusion the size and shape of a ping pong ball. located between the left thigh and the scrotum. Plaintiff had no other pain in any other region of the body. Urine sample was taken for tests.

FEBRUARY 7, 1973 Defendant Brown's notes describe the plaintiff s anus as a "soft, non-tender, b mons, an arrhenomimetic rebound," and that the plaintiff had "a fair amount of paranoid ideation."

Defendant Mangano's preoperation notes call for a "herniorrhaphy."

Defendant Brown noted as "Imp. (1) inguinal her ... Plan Sigmondscopy ... herniorrhaphy if no lesion." i.e. in the Sigmoid



colon.

FEBRUARY 8, 1973 Defendant Fagan's pre-operation notes in the hospital record views the problem to be a "pantaloon hernia." His post-operation note describes his first cut as a "transverse incision."

On Feb. 8, 1973 plaintiff's pre-operation examinations were begun, i.e. X-rays and a painful Sigmondoscopy. All of this ordinarily is done on the day before the operation. There is no record in plaintiff's file of having suffered through the Sigmondoscopy except as noted by defendant Brown as being his "Plan".

POST-OPERATION VISITS TO DEFENDANT FAGAN . In October or November of 1973 plaintiff visited defendant Fagan to express plaintiff's fear of death by cancer which the plaintiff thought was concealed from him.

1. Plaintiff complained of unusually long stools ( 12 to 14 inches), of erections for no sexual reason, of a masterbation incident when the plaintiff felt the sexual sensation at ejaculation spread across the hernia scar, and of a weight loss ( 175 pounds down to 140 ). Plaintiff had been dieting and exercising.

2. Defendant Fagan made a physical examination and had urine and blood tests taken. He reassured plaintiff that he was in good health and prescribed an end to dieting and jogging and an increase in food and sweets intake.

In January or February, 1974, plaintiff returned to defendant Fagan and renewed his belief of imminent death for the following reasons:

- early morning sexual pleasure and excitement in the legs and buttocks of a kind experienced when petting a woman;
- also continuance of laong stool passing and daily masterbation.

Defendant Fagan ma de a physical examination, had blood and urine samples taken and declared plaintiff in good health.

In May of 1975 plaintiff returned to defendant Fagan renewing his plea for information as to how much time he had to live.

1. Plaintiff told defendant Fagan he was worried because he believed that he was going to be married in the near future.
2. Plaintiff renewed his concern for extra-long stools and unsolicited sexual pleasure in his buttocks and legs.. Defendant Fagan said he could only surmise that plaintiff was mentally disturbed and recommended that plaintiff visit a psychiatrist whom he knew at THE CAMBRIDGE HOSPITAL.

Plaintiff rejected this advice saying that if the doctor could find nothing wrong perhaps there was really nothing wrong.

In June of 1975 plaintiff noticed a throbbing in two specific locations in the buttocks which he believed were the location of the male's testes ... plaintiff believed that testes were quite separate from the testicles. Plaintiff thought that he had better stop masterbating so much.

IN JULY OF 1975 plaintiff visited a Dr. Miner in Los Angeles, Cal., because the plaintiff's brother wanted to prove to the plaintiff that he was really not dying.

1. This doctor said he could find nothing wrong.
2. During this physical examination the doctor seemed astonished that plaintiff could pass such large stools without even feeling them pass out rectum.
3. When plaintiff told Dr. Miner that while on the beach recently his buttocks became so sexually excited that plaintiff could not keep his hands still ... Dr. Miner commented that women report feelings of sexual pleasure while sun bathing.

This comment together with Dr. Miner's preoccupation and obvious interest in the plaintiff's anus ... taking a long time wipping off the



lubrication jelley used for the rectal-bladder examination ... these things alerted the plaintiff that something extraordinary had escaped the plaintiff's awareness about himself.

The plaintiff's investigation this last month ( Aug. - Sept. ) form the basis of the following allegations.

ALLEGATIONS

The plaintiff alleges the following surgery was performed upon him at the defendant hospital by the defendant physicians because of their willful, wanton, and reckless negligence and misconduct:

a. Sterilization
b. Exposure of the Sacral plexus and/or the Superior gluteal nerves which are located in the gluteaus maximus muscles ... to the end that
   - the nerves would simulate ovary activity and
   - the nerves would stimulate muscle tension in the buttocks and legs and pelvis region, a stimulation that simulates sexual excitement.
c. Exposure of the Sacral plexus and/or the Superior gluteal nerves to live, active spermatozoa produced in the testicles and emptied out from the severed spermatic cord onto the exposed nerves ... so that the sperm would irritate and excite these nerves.
d. The obstruction (partial), or the creation of an artificial anus (colostomy) at the site of the Sigmoid flexure of the colon ... to the end that:
   - large, long stools should build up in the Descending colon and, by their passing through the rectum over 20 to 30 seconds, would deactivate the sphincter ani muscle ... and
   - the rectum should become an empty sleeve for penis accomidation ... a simulated

vaginal barrel.

e. Pain and suffering. (Listed as an appendix to this complaint.)

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RELIEF

Plaintiff petitions the court for ordinary and punative damages in money awards from the defendants as listed below:

| | |
|---|---|
| 1. Sterilization | $ 1,000,000 |
| 2. Exposure of nerves | 500,000 |
| 3. Manipulation of Sigmoid colon | 500,000 |
| 4. Pain and Suffering | 1,000,000 |
| TOTAL | $ 3,000,000 |

signed: Owen F. Lyons, pro se

MURRAY, J. Papers impounded - 9/16/75



APPENDIX

PAIN AND SUFFERING

1. Loss of ability to produce children.
2. Loss of opportunity to marry and enjoy family life.
3. Loss of honorable and natural congress with members of the female sex.
4. Loss of easy and natural association with members of the male sex.
5. The object of scorn, humiliation, pity, and ridicule of family, friends, professional associates, and the community at large.
6. Practice of personal sexual abuse due to surgery induced urges.
7. Surgically produced physiological urges to participate in unnatural, illegal, and immoral sexual activity.
8. Loss of control of salivary glans when speaking.
9. Psychological pain from realizing people's fear and dread of one so afflicted, especially so when it concerns the teaching of children, the plaintiff's profession.
10. Likelihood of future corrective surgery and/or a life time of medication.
11. More than two years in fear of imminent death because of the affects of illegal surgery.
12. More than two years of mental disturbance and and paranoia because of knowledgeable people's behavior toward plaintiff.
13. Sleeplessness due to surgically produced muscle tension simulating sexual excitement.
14. Stressful situations (death in the family, etc.) triggers the described surgical mechanics and causes weakness in the legs, feet, and buttocks.

signed: Owen F. Lyons pro se

CERTIFICATE OF SERVICE requirements met.

IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS — Civil Action
Plaintiff — 75 - 3845 - M

v.

JOHN F. FAGAN ET AL
Defendants

September 16, 1975

MOTION

THE DISCOVERY PHASE OF THE CASE BEGIN AT ONCE

Now comes the plaintiff to petition the court to:

1. begin the Discovery phase of the case at once without waiting for the defendant's answer;
2. order a physical examination of the plaintiff to establish whether there is any basis for the plaintiff's allegations;
3. appoint a physician as an officer of the court to conduct the examination.

REASON FOR THE REQUEST

Plaintiff believes he has been treated by unknown means and persons to diarrhetic medicines. Since the filing of the complaint plaintiff has passed urine in excessive amounts;

1. his stools have hardened and are difficult to pass.
2. On Monday Sept. 15, during two bowel movements, plaintiff strained to evacuate very hard stools;
3. Thereafter plaintiff experienced abdominal pain which has reoccurred this day, Sept. 16, following a bowel movement.

Plaintiff fears that the origin of the abdominal pain is the Sigmoid colon, at the site the plaintiff alleges has been obstructed by the formation of an artificial anus.



Plaintiff believes that the diarrhetic medicines and hard stools may break, or have broken, the ties used to form the artificial anus.

The allegations of "manipulation of the Sigmoid Colon," and "sterilization," can be easily substantiated or disproven by an examination of a physician appointed as an officer of the court.

NO OTHER MEANS AVAILABLE TO PLAINTIFF

Plaintiff has requested that physicians at the Massachusetts General Hospital conduct this examination on Sept. 15, He was advised to consult a lawyer who works with a physician in malpractice cases.

Unsuccessfully has the plaintiff tried to employ a lawyer who is familiar with malpractice cases and who has employed physicians as expert witnesses in such cases.

Plaintiff believes his only recourse to establish the truth in this case is through the Federal Court's power of Discovery.

signed: Owen F. Lyons pro se

CERTIFICATE OF SERVICE requirements met.

IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS
Plaintiff

Civil Action
75 - 3845 - M

v.

JOHN F. FAGAN ET AL
Defendants

October 3, 1975

MOTION
THAT A U.S. MAGISTRATE EMPOWER OWEN F. LYONS PRO SE TO MAKE SERVICE OF HIS COMPLAINT ON DEFENDANTS

Now comes the plaintiff to request that a U.S. Magistrate empower Owen F. Lyons, pro se, to make service of his complaint upon the defendants named in this case. Plaintiff filed his complaint on September 12, 1975, and as of October 3, 1975 no service by the U.S. Marshal has been made.

Plaintiff believes that the nature of his complaint requires immediate service, that delay of service could work to his personal harm.

Plaintiff relies on the Res Ipsa Loquitur doctrine to prove his allegations. Plaintiff believes that his physical condition resulting from alleged malpractice (especially the tei-off of the Sigmoid colon) makes him the target for the kind of mischief that forms the basis of his complaint, i.e. the intervention of parties with an interest in seeing to it that the tie on the Sigmoid colon is broken before a court ordered physical examination is made.

signed: Owen F. Lyons pro se

CERTIFICATE OF SERVICE requirements met.
MURRAY, J., MOTION DENIED, October 8, 1975



IN THE
UNITED STATES DISTRICT COURT
DISTRICT FOR MASSACHUSETTS

OWEN F. LYONS
Plaintiff

Civil Action
75 - 3845 - M

v.

JOHN F. FAGAN ET AL
Defendants

October 3, 1975

MOTION

IMMEDIATE PHYSICAL EXAMINATION OF THE PLAINTIFF

Now comes the plaintiff to motion for an immediate physical examination to establish or disprove the allegations made against the defendants.

After consultations with doctors and lawyers the plaintiff knows that only a physician appointed as an officer of the court will make the examination.

REASON FOR THE MOTION

The evidence the plaintiff relies upon to prove his allegations consist of the physical conditions now existing within the plaintiff's body.

This evidence vital to the plaintiff's case is subject to alteration or obliteration as long as he remains unexamined.

Delay here makes the plaintiff a target for the kind of mischief that he allegedly suffered at the hands of the defendants.

signed: Owen F. Lyons pro se

Certificate Of Service requirements met.

IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS — Civil Action
Plaintiff — 75 - 3845 - M

v.

JOHN F. FAGAN ET AL
Defendants — October 6, 1975

MOTION

PLAINTIFF SEEKS THE PROTECTIVE CUSTODY OF THE COURT

Now comes the plaintiff to request that he be taken into the protective custody of the court for the purpose of medical examinations by court appointed physicians.

Plaintiff needs medical attention. He cannot obtain this without placing himself within the unsupervised control of physicians whose financial and professional interests may be antagonistic to the plaintiff's allegations against collegues in the medical fraternity.

Plaintiff relies on the Res Ipsa Loquitur doctrine to prove his allegations, i.e. a tie-off of the Sigmoid colon surely has nothing to do with the correction of a hernia, that such a tie-off not only "speaks for itself" but also for the other allegations in the complaint.

Plaintiff believes the physicians who are not officers of the court may alter or change the physical conditions which form the basis of plaintiff's allegations.

REASON FOR THE MOTION

Upon the plaintiff's return to Massachusetts from California ( August 22, 1975 ) he noticed a fine pealing or dried rubbings of tissue covering the penis glans.



Rubbing during masterbation caused the penis glans to become tender and to appear shiny and polished. In order to continue daily masterbation plaintiff used vaseline jelly as a lubricant for a week.

On Ausust 25, 1975 during masterbation plaintiff noted a break in the skin of the penis glans at its largest circumference. There was a dot of blood at the break.

Underneath the break, the underside of the foreskin, there were very dark streaks within a red raw area. Later that day plaintiff noted a red blotch on the upper side of the penis glans with a cluster of dark red spots within a red blotch.

The next day, August 26, plaintiff took four urine samples and a letter of explanation to the Federal Bureau of Investigation in Boston. (see Appendix A)

The F. B. I. referred plaintiff to the Justice Department where the plaintiff was interviewed by Federal Attorney Kevin O'Day. Mr. O'Day said there were no facilities to accept the urine samples but he agreed to review the written communications the plaintiff had with the F. B. I. while he was in California.

By research plaintiff finds that his letter of August 26 describes a case of Yaws, an infectious non-venerial disease caused by treponema pertenue. Plaintiff believes that this disease, which registers positive in syphlis tests, was communicated by the vaseline jelly being used by the plaintiff.

There was easy access to the plaintiff's home in Cambridge, Mass. during August 22 through August 25, a time when the plaintiff occupied the house alone. Since September 27, 1975 there has been an eruption of a white waxy substance from the plaintiff's penis glans.

Plaintiff believes that the communication of this disease is a cover-up of a more serious pathology existing in the penis, a process of degeneration of the tissues caused by alleged tampering with

nerves which are necessary to the healthy functioning of the penis.

Plaintiff fears that this degeneration of tissues in the penis is a contemplated result of the alleged surgery on the nerves and possibly foretells the surgical removal of the penis.

During this period (August 22 to August 26) plaintiff noted a further lengthening of the penis from 6 inches to around 6 3/24. In his hand written notes to Dr. Miner in California plaintiff noted an increase in the length of his penis from around 5 1/2 inches to 6 in .

Plaintiff's research of medical literature tells him that after maturity there is no lengthening of the penis no matter how much exercise. Plaintiff now realizes that this lengthening indicates a pathological condition.

## PLAINTIFF'S VISIT TO DR. MINER IN CALIFORNIA

Plaintiff visited California from July 28 to August 22, 1975. On Aug. 1, 1975 Dr. Miner was given the plaintiff's handwritten notes of the physical conditions which were bothering him. (see Appendix B.)

These notes observed that the daily sexual excitement experienced by the plaintiff in the buttocks, legs, and feet was not accompanied by a penis erection. The erection had to be manually produced. Dr. Miner made no comment.

Plaintiff noted that during masterbation, at ejaculation, the sexual feeling spread across the hernia scar. Dr. Miner probed with his fingers the scar area and abdomen below.

During this probe Dr. Miner recommended that the plaintiff visit a urologist at the Veterans Administration Hospital, that the V.A. urologist may want to put a needle-type instrument up the penis shaft in order to look at the bladder.

It was immediately after this visit that the plaintiff discovered the mutilation of his anus ring



by the V.A. So the plaintiff declined to visit the V.A. hospital.

Plaintiff believes that Dr. Miner's probe of the abdomen was to try locate the spermatic cord, to determine how far from the incision the cord had descended towards the left testicle.

At present the cord has descended to the lower abdomen, just above the scrotum. Plaintiff can feel the sperm fluid empty out at this point whenever he is sexually aroused.

Plaintiff believes this condition is also a contemplated result of the alleged severance of the cord during the operation. Plaintiff fears that the consequences of this could mean the surgical removal of the testes.

Dr. Miner's reassurance that he could find nothing wrong with the plaintiff, that the urine was "clear", that the blood tests showed no pathology, prompted the plaintiff to make plans to stay in California and prepare to take the California Bar Examination.

However the plaintiff's condition remained the same prompting him to return to Massachusetts to research the reasons for his condition.

The plaintiff's plans were greeted with pleas from his brother and sister-in-law to visit a psychiatrist and remain in California.

When the plaintiff's plans remained unchanged his sister-in-law, Dr. Miner's nurse, warned him that he could be forceably restrained or held over for 72 hours according to California law, that Dr. Miner had made telephone calls to verify this.

Plaintiff believes that Dr. Miner had discovered serious pathology in the plaintiff's spermatic cord, penis, and rectum.

The plaintiff's declared intention to bring this matter before the courts probably prompted Dr. Miner to consider drastic legal action to prevent the plaintiff's return to Massachusetts.

## THE NOTES OF DEFENDANTS FAGAN AND BROWN

In the plaintiff's complaint defendant Fagan referred to "pantaloon hernia" and his "transverse incision".

The complaint also quotes Dr. Brown's notes as describing plaintiff's anus as a "soft, non-tender, 0 mons, an arrhenomimetic rebound ...".

Plaintiff has just discovered the meaning of the word written under "arrhenomimetic rebound ...". The word appears as "guerin".

Plaintiff believes that this word refers to the French surgeon Guerin (1816 - 1895) who described the valve of the navicular fossa.

Navicular means boat-shaped.

Navicular fossa is the name of the depression between the vaginal aperture and the forchette.

Fourchette is the fold of skin just inside the posterior commissure of the vulva.

Commissure refers to strands of nerve fibers uniting like structures as the labia majora.

Plaintiff believes that Dr. Brown's note "guerin" refers to the area between the plaintiff's anus and scrotum, that this area would be the site of an artificial vagina.

Plaintiff believes that Dr. Brown's note describing the plaintiff as having a "fair amount of paranoia" was a referrece to the ways and means that would be employed to acomplish a sex transversal of the plaintiff, i.e. by exploiting his paranoia in a skillfull, perhaps professional way, the plaintiff would soon be committed to a hospital, perhaps the V.A. Hospital, for excessive paranoia.

During his commitment the pathology of the plaintiff's penis and scrotum would be discovered, at which time, not requiring consent of a mentally deranged person in custody, these organs would be surgically removed and an artificial vagina created.



Plaintiff renews his plea to the court for its protection and for court appointed physicians to conduct a medical examination of the plaintiff.

signed: Owen F. Lyons, pro se

APPENDIX A. (to Motion of Oct. 6)

To: F.B.I.
Washington, D.C.

RE: Urine Specimines

Dear Sir,

I have this day, Aug. 26, submitted to your Boston Office 4 specimines of the urine I passed from Monday, Aug. 25 at 11:00 P.M. to Tuesday Aug. 26 at 10:00 A.M.

REASON

After masterbating at 2:00 P.M. Monday, Aug. 25, I noticed a small break in the penis glans at the area of its largest circumference. A dot of blood was at the break.

Below the break, the underside of the foreskin had dark red streaks through it.

Several hours later I noticed a red blotch on the top side of the penis glans. Dark red spots were evident within the blotch area.

Examination of my urine revealed white particles floating in the urine. Specimines gathered during the night and this morning reveal the same white particles.

From yesterday to today a very odd odor came from the penis glans.

Last night the whole circumference of the widest area of the penis glans was too sore to touch.

I believe a kind of drug is responsible for the above condition. A year ago this same drug was serriptitiously administered to me on two occasions and produced the same condition described above.

Evidently the drug causes the white particles to be passed out with the urine. After urinating some of the white particles remain on the penis glans, the rubbing of which causes the severe irritations described above.

Sincerely, Owen F. Lyons



APPENDIX B. (to Motion of Oct. 6)

PLAINTIFF'S NOTES PREPARED FOR PHYSICAL EXAMINATION BY DR. MINER

April or May, 1973

Operation by Dr. Fagan to correct a hernia. The assisting doctor put in a bill for connecting a tube-vessel.

I think this tube vessel leads across by abdominal scar and down into my left testicle.

Sept. and Oct. 1973

Went on a rigid diet. Exercised by jogging, a little at first and later up to 3 or 4 miles.

My weight fell from 175/180 lbs. down to 140 lbs. This alarmed me.

November 1973

Visit to Dr. Fagan. I was certain I was dying.

1. repeated appearance of strangers showing an interest in me over a period of 3 months confounded me.
2. a masterbation episode when, at ejaculation, the sex feeling spread across the hernia scar.
3. constant wind passing (farting).
4. unusual reoccurance of erections for no sex related reason.
5. the passing of abnormally long stools.

I told the Dr. that I figured he found cancer and just closed me up. I wanted to know how much time I had to live.

A blood test was made. The Dr. said he could noghing wrong with my health -- that the operation dealt with a simple hernia only. He advised me to eat rich foods and give up jogging.

January 1974

I began to awaken in the morning with erotic

feelings from my waist down to my toes. I felt as one does when in bed petting a woman.

I began masterbating nearly every morning. I had marriage in mind so I thought this was good practice.

1. Previously I had masterbated maybe once or twice a week.
2. Sexual intercourse up to this time numbered no more than a dozen times.

The time spent masterbating was about an hour at a time, although I could go for several hours. I could ejaculate quickly and begin all over again.

1, I noticed an increased size of the erect penis from around 5 in. to 6 in.
2. The extra long stools (10 in. to 12 in.) accompanied, before or after, masterbation. Usually the bowel movement occured only every other morning.
3. No erection accompanied these sexual feelings. Erection had to be manually produced.
4. I usually ate only toast and coffee for breakfast. The noontime lunch saw me eat well. But around an hour later I would become extremely tired and slow of movement and speech and with little patience for my class. (of children)

In order to function at all I had to stand on my feet. Even here I had occasion to doze a nd forget what I was talking about. Naps after school and 10;00 o'clock-to-bed did no good.

I found that sweets eaten when I became drowsy revived me. Another solution was to eat no lunch in order to stay alert for the afternoon session.

Long walks after-school revived me. But when I sat down for coffee in a shop and relaxed a little, I became sensitive to noise, esp., a clatter of dishes or glasses. I would jump right off my seat.



January 1975

I located the source of my sexual excitement -- the testes, I think they are called, in my buttocks.

1. These (testes) are centered on each buttock about an inch above the rectum.
2. Stimulation of these testes:
   (a) hot food - coffee - water.
   (b) heat from rubbing

The intestine, however, must be filled, i.e.. an emptying of the intestine -- as by diarrhea or repeated bowel movement over a period of several hours, prevents stimulation.

May 1975 Second Visit to Dr. Fagan

Sexual feelings no longer localized from hips down -- feelings extended all through my arms and hands also. On reflection I believe this was drug induced

I thought my feelings were produced by internal poisons and these had now reached the upper parts of my body.

I told the Dr. and asked him if he wouldn't finnally tell me how long I had to live.

The Dr. said my problem was mental disturbance and that I should see a psychiatrist -- in addition to new tests of blood and urine.

July 1975

On Cape Cod Beach: The sun's heat produced the sexual feelings. One day the feelings became so pronounced that it was difficult to keep my hands and fingers from shaking.

Purchased beer and liquor from various package stores -- drinking had unexpected results -- drowsiness -- need for sleep.

A coffee purchase from the Teatickette Coffee shop caused my posterior to come alive with sexual excitement.

POINT? many others know of my condition and exploit it.

June 1975- in Boston
Ramada Hotel

Visits
1 st week - drank Scotch
no affect
2 nd week- ordered V. O. and
water; two sips and
posterior turned on.
3 rd week- ordered beer; two
sips and turned on.

July 1975 (cont.)
News of my brother's death
Discontinued masterbation for a week. This caused abdominal pain (not intolerable) across the hernia scar when walking.

I think this is the tube vessel extending from abdomen to left testicle. Masterbation resumed and no more pain.

At Beach: When swimming can feel a pull on this tube vessel.

Close up observation of life guards when I enter water alarmed me.

Can this tube-vessel be ready to break, thus causing my death?

Or is this observation due to my hypersensitivity to hot and cold?

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signed: Owen F. Lyons pro se



IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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OWEN F. LYONS
Plaintiff

Civil Action
75 - 3845 - M

v.

JOHN F. FAGAN ET AL
Defendants

October 9, 1975

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MOTION

Request Service Not Be Made On
Defendants Pending Redrafting
Of Complaint

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Now comes the plaintiff to motion that the U. S. Marshall's Office be requested not to make service of the plaintiff's Complaint pending a redrafting of the Complaint.

signed: Owen F. Lyons pro se

CERTIFICATE OF SERVICE requirements met.

IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS
Plaintiff

Civil Action
75 - 3845 - M

v.

JOHN F. FAGAN ET AL
Defendants

October 17, 1975

AMENDED
COMPLAINT

1. THE PARTIES

The plaintiff, Owen F. Lyons, 28 Ellsworth Ave., Cambridge, Massachusetts, 02139, is a resident of Cambridge, Massachusetts and is a citizen of the United States.

Defendant John F. Fagan, 1679 Massachusetts Ave., Cambridge, Massachusetts, 02138, is a physician who practices medicine at The Cambridge Hospital, Cambridge , Massachusetts. He is a citizen of the United States and Massachusetts.

Defendant S. N. MANGANO, 384 Huron Ave., Cambridge, Massachusetts, 02138, is a physician who practices medicine at The Cambridge Hospital, Cambridge, Massachusetts. He is a citizen of Cambridge, Massachusetts, and the United States.

Defendant Horst S. Filtzer, 1493 Cambridge St., Cambridge, Massachusetts, is a physician who practices medicine at The Cambridge Hospital. He is a citizen of Massachusetts and the United States.



Defendant Brown is a citizen of the United States. He is a physician and practiced medicine in February, 1973 at the Cambridge Hospital. His handwritten interview with the plaintiff is in The Cambridge Hospital's record. The Cambridge Hospital, 1493 Cambridge St., Cambridge, Massachusetts, 02139.

Defendant Hospital, The Cambridge Hospital, 1493 Cambridge St., Cambridge, Massachusetts, 02139, is chartered as a private hospital but is completely dependent upon city, state and federal government funds for the financing of operations, functions, and personel.

Defendant E. M. Miner, 10242 Canoga Ave., Chatsworth, California, 91311, is a citizen of California and the United States. He is a physician who examined the plaintiff around August 1, 1975.

2. Jurisdiction

Title 28 U.S.C. Code - Chapter 85, Section 1331
Chapter 87, Section 1391 (b)
Massachusetts General Laws
Chapter 260, Section 12

3. Facts

In 1958 plaintiff was admitted to the Veterans Administration Hospital, Jamaca Plain, for surgery to relieve a fissure of the anus ring.

V. A. physicians removed the anus ring and left a simulated vulva.

Defendant Fagan attended to the plaintiff's care for five days following the operation at the Cambridge Hospital without comment on the mutilation received at the V. A.

Defendant Fagan had plaintiff admitted to The Cambridge Hospital on February 6, 1973, for an operation to correct a protrusion the size and shape of a ping pong ball located between the left thigh and the scrotum. A urine sample was taken

on this day but no other attention was paid to the plaintiff.

The next day, February 7, defendant Mangano noted in the hospital record that he was scheduled for a "herniorrhaphy" on Feb. 8; there was no X-ray to lead him to believe that the radical form of operation was needed on Feb. 7.

On February 7, defendant Brown examined plaintiff's penis, scrotum, and anus. He then proceeded to question the plaintiff about his love life. These handwritten notes are in the hospital record.

Defendant Brown noted that the plaintiff's testicles were in the scrotum but he did not think them very large. He noted that the plaintiff's anus to be a "soft, non-tender, 0 mons, an "arrhenominetic rebound", adding the word "guerin."

"guerin" refers to the French surgeon Guerin (1816 - 1895) who described the valve of the navicular fossa, the depression between the vaginal aperture and the forchette.

Defendant Brown also noted that the plaintiff had a "fair amount of paranoia."

Like defendant Mangano (who) knew before X-rays a herniorrhaphy was needed, defendant Brown noted as

"Imp. (1) inguinal her ...
Plan: Sigmondoscopy ...
herniorrhaphy if no lesion" i.e. in the Sigmoid colon.

The only notes in the hospital record on the day of the operation, Feb. 8, were written by defendant Fagan. His pre-operation note views the problem as a "pantaloon hernia" and his post operation note describes his first cut as a "transverse incision."

The hospital records show that defendant Filtzer assisted in the operation.



On February 8, 1973 all pre-operation examinations relative to the type of operation which had to be done were begun, i.e. X-rays, ennamas.

Standard hospital procedures call for these examinations to be completed the day before the operation, the very reason why the plaintiff was admitted on February 6 for an operation to take place on February 8.

Post-Operation Visits to Defendant Fagan

In October or November of 1973 plaintiff visited defendant Fagan to express plaintiff's fear of death by cancer which plaintiff thought was concealed from him.

Plaintiff complained of unusually long stools (12 to 14 inches), of erections for no sexual reason, of a masterbation incident when plaintiff felt the sexual sensation at ejaculation spread across the hernia scar, and of a weight loss (175 pounds down to 140).

Plaintiff had been dieting and exercising.

Defendant Fagan made a physical examination and had urine and blood tests taken. He reassured plaintiff that he was in good health and prescribed an end to dieting and jogging and an increase in food and sweets intake.

In January or February, 1974, plaintiff returned to defendant Fagan and renewed his belief of imminent death for following reasons:

- early morning sexual pleasure and excitement in the legs and buttocks of a kind experienced when petting a woman;
- also continuance of long stool passing and daily masterbation.

Defendant Fagan made a physical examination, had blood and urine samples taken and declared plaintiff in good physical health

In May of 1975 plaintiff returned to defendant Fagan renewing his plea for information as to how much time he had to live.

Plaintiff told defendant Fagan he was worried because he believed that he was going to be married in the near future.

Plaintiff renewed his concern for extra-long stools and unsolicited sexual pleasure in his buttocks and legs.

Defendant Fagan admonished plaintiff for his interest in Playboy and Penthouse magazines.

Defendant Fagan made a physical examination and advised plaintiff that he could find nothing physically wrong.

Defendant Fagan said he could only surmise that plaintiff was mentally disturbed and recommended that plaintiff visit a psychaitrist whom he knew at The Cambridge Hospital.

Plaintiff rejected this advice saying that if the doctor could find nothing wrong perhaps there was really nothing wrong.

In June of 1975 plaintiff noticed a throbbing in two specific locations in the buttocks which he believed were the location of the male's testes ... plaintiff believed that testes were quite separate from the testicles. Plaintiff thought he had better stop masterbating so much.

In July of 1975 plaintiff visited a Dr. Miner in Los Angeles, Cal., because the plaintiff's brother wanted to prove to the plaintiff that he really was not dying.

1. The doctor said he could find nothing wrong
2. During this physical examination the doctor seemed astonished that plaintiff could pass such long stools without even feeling them pass out through his rectum.

When the plaintiff told Dr. Miner that while on the beach recently his buttocks became so sexually excited that plaintiff could not keep his hands still ... Dr. Miner commented that women report feelings of sexual pleasure while sun bathing.



This comment together with Dr. Miner's preoccupation and obvious interest in the plaintiff's anus ... taking a long time wiping off the lubrication jelley used for the rectal-bladder examination ... these things alerted the plaintiff that something extraordinary had escaped the plaintiff's awareness about himself.

Plaintiff's hand written notes to Dr. Miner to assist him in diagnosing the problem pointed out that the plaintiff's penis had actually lengthened more than a half inch in the past year.

ALLEGATIONS

1. Defendants surgically produced an opening in the left spermatic cord so that sperm from the Ductus diferens would empty into the pelvic area.

2. Defendants exposed the Sacral plexus and/or the Superior gluteal nerves which are located in the glutaeus maximus muscles ... to the end that

   (a) the nerves would simulate ovary activity ... and
   (b) the nerves would stimulate tension in the buttocks and legs and pelvis region, a stimulation that simulates sexual excitement.

3. Defendants exposed the Sacral plexus and/or the Superior gluteal nerves to live, active sperm fluid which empty out from the left spermatic cord at the site where the exposed nerves are located.

4. The obstruction (partial), or the creation of an artificial anus at the site of the Sigmoid flexure of the colon ... to the end that

   (a) large, long stools should build up on the Descending colon and, by their passing through the colon, would irritate the exposed nerves, would deactivate the sphincter ani muscle, and

   - would leave the rectum an empty sleeve for penis accomodation - a simulated

vaginal barrel.

5. Defendant Miner of California knew, or by examination, gained knowledge of the plaintiff's condition. His concealment of the facts from the plaintiff risked the physical and mental health of the plaintiff.

6. Defendants created a pathological condition in the plaintiff's penis by exposing nerves vital to its proper functioning. This could mean the eventual surgical removal of the plaintiff's penis.

Plaintiff alleges the above harm was done to him by the defendants because of their wilfull, wanton, and reckless negligence and misconduct.

RELIEF

Plaintiff petitions the Court for ordinary and punative damages in money awards from the defendants as listed below:

| | |
|---|---|
| 1. Harm to Spermatic cord | $ 1, 000, 000 |
| 2. Exposure of nerves | 1, 000, 000 |
| 3. Manipulation of Sigmoid colon | 500, 000 |
| 4. Pain and Suffering | 1, 000, 000 |
| | $ 3, 500, 000 |

signed: Owen F. Lyons pro se

Certificate of Service requirements met.



IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS
Plaintiff

Civil Action
75 - 3845 - M

v.

JOHN F. FAGAN ET AL
Defendants

October 20, 1975

MOTION
Discovery Procedures Begin Without Awaiting Answer

Now comes the plaintiff to request that the Court commence its discovery procedures without awaiting the defendants' Answer.

The plaintiff requests the court to appoint physicians as officers of the court to conduct examinations of the plaintiff and report their findings to the court.

REASON FOR THE MOTION

Plaintiff believes that delay in medical examinations jeopardizes his physical health. Only by a medical examination by court appointed physicians can the plaintiff sensibly seek medical treatment.

Pathological Condition Of The Penis

Plaintiff's observations: When the heat of a hot water bottle is brought into close proximity to the penis, the underside of the foreskin becomes dark red and, in spots, becomes bloated.

The affect of the heat is similar to the affects of a severe rubbing of the underside of the foreskin.

Thereafter, when the penis is held in cold water for a time, the penis glans at its largest

circumference becomes bloated and discolored.
In each buttock, the Sacral nerves (or the inferior mesenteric ganglion), which are alleged to be exposed by surgery, involuntarily throb when the penis is held in cold water for a time.
This throbbing is accompanied by involuntary leg muscle spasms.

signed: Owen F. Lyons pro se

Certificate of Service requirements met.



IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS
Plaintiff

Civil Action
75 - 3845 - M

v.

JOHN F. FAGAN ET AL.
Defendants

October 24, 1975

MOTION

The Court Direct The U.S. Marshall's Office To Make Service of The Plaintiff's Complaint

Now comes the plaintiff to motion that the court direct the U.S. Marshall's Office to make service of the plaintiff's complaint.

Reason For The Motion

Since the filing of the original complaint, September 12, 1975, the U.S. Marshall's Office has failed to make service on the defendants.

Nearly two months hage passed and it is difficult for the plaintiff to understand that the Marshall's Office is too busy to carry out its constitutionally sworn duty.

Indeed, it appears that the negligence of the Marshall's Office is a very serious obstruction of justice in this case.

Plaintiff believes by bringing this matter to the attention of the court, that prompt service will be made.

signed: Owen F. Lyons pro se

Certificate of Service requirements met.

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

Civil Action
NO. 75 - 3845 - M
Defendant's Motion
To Dismiss

OWEN F. LYONS

v

JOHN F. FAGAN, ET AL

October 24, 1975

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Now comes the Defendant, The Cambridge Hospital, and moves the Court as follows:

1. To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.

2. To dismiss the action because of misnomer of the defendant since the defendant's name is the City of Cambridge, a municipal corporation duly organized and existing under the laws of the Commonwealth of Massachusetts and having a usual place of business in Cambridge, Middlesex County.

3. To dismiss the action because the plaintiff's claim is not stated in numbered paragraphs.

4. To dismiss the action on the ground that the plaintiff failed to stae in separate counts each of the alleged claims for relief set forth in the complaint asserted by the plaintiff since the said claims are founded on separate occurrences and separate statement is essential to the clear presentation of the matters set forth in the plaintiff's complaint.

By its attorney, Edward A. Cunningham
City Hall
Cambridge, Massachusetts



IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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OWEN F. LYONS
v.
JOHN F. FAGAN ET AL

Civil Action
75 - 3845 - M

October 30, 1975

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MOTION

The Court Grant Authority To A Constable To Make Service Of Complaint

Now comes the plaintiff to motion that a Boston constable from Suvalle - Jodrey & Associates make service of the plaintiff's Complaint on the defendants.

signed: Owen F. Lyons pro se

Certificate of Service requirements met.

-

UNITED STATES DISTRICT COURT
of the
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS
v.
JOHN F. FAGAN ET AL

Civil Action
75 - 3845 - M

November 7, 1975

MOTION
Of The Defendants John F. Fagan And S. N. Mangano To Dismiss Under Federal Rules Of Civil Procedure 12 (b) (1) An d 12 (b) (6)

Now comes the defendants John F. Fagan and S. N. Mangano in the above entitled action, and under Federal Rules of Civil Procedure 12 (b) (1) and 12 (b) (6), move to dismiss this action by the plaintiff.

By their attorney,

Jared H. Adams
148 State Street
Boston, Massachusetts
02109
Tel: 523-2407 - 8

The defendants John F. Fagan and S. N. Mangano hereby request a hearing on the above motion

Certificate of Service requirements met.



IN THE
UNITED STATES DISTRICT COURT
DISTRICT FOR MASSACHUSETTS

OWEN F. LYONS
v.
JOHN F. FAGAN ET AL

Civil Action
75-3845-M

November 10, 1975

MOTION
For Leave To File For Writ Of Mandamus

Now comes the plaintiff to motion the court for leave to file the petition for a writ of mandamus hereto annexed;

and further moves that an order and rule be entered and issued directing the Honorable The United States Marshal's Office for Massachusetts, and the Honorable John A. Birknes Jr., United States Marshal for Massachusetts, to show cause why a writ of mandamus should not be issued against them in accordance with the prayer of said petition,
and why your petitioner should not have such other and futher relief in the premises as may be just and meet.

signed: Owen F. Lyons pro se

Certificate of Service requirements met.

IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS, Petitioner

v.

John A. Birknes Jr.
Marshal respondent

(75 - 3845 - M
Civil Action)

November 10, 1975

PETITION

For A Writ Of Mandamus To The United States Marshal's Office For Massachusetts, And The Honorable John A. Birknes, United States Marshal For Massachusetts.

To the Honorable the Judge of the United States District Court for Massachusetts:

The petition of the above named petitioner for a writ of mandamus to the above named respondents respectfully shows to this honorable court:

The Law Relied Upon In This Case

Title 28 U.S. Code, RULE 4 - PROCESS

(a) Summons: Issuance

"Upon the filing of the Complaint the clerk shall forthwith issue a sommons and deliver it for service to the marshal ..."

(b) By Whom Served

"Service of all process shall be made by a United States marshal ..."

Statement of the Case



On September 12, 1975 the petitioner filed his complaint with the clerk of the U.S. District Court who did "forthwith issue a sommons and deliver it for service to the marshal ..."

On November 4, 1975 the petitioner received by mail the "U.S. Marshal's Service Process Receipt and Return." This letter from the Marshal contained "Notice of Service" on four defendants.

There are two defendants who remain to this date, Nov. 9, 1975 unserved by the marshal's office.

Amplifying Arguments In Support Of This Petition

I. The Language Of Rule 4 Of Title 28 U.S. Code Commands The Prompt Performance Of Duty By The Clerk And The Marshal.

The clerk "shall forthwith issue".

"The service of all process shall be made" by the marshal.

The two month delay between the filing of the complaint and a partial "Notice of Service" does not appear to be in compliance with the command of the law nor its indicated urgency of performance.

II. The Negligence Of The Marshal's Office Attacks The Integrity Of The Judicial Process At Its Very Inception.

If the petitioner's complaint had November 1, 1975 as the last date to file in order to come within the Statute of Limitations, the petitioner would have been denied his right of action the defendants.

A great injustice would have transpired due, not to the fair and impartial administration of justice, but to the negligence of the marshal's office.

The Constitution and the laws are so much relied upon by Americans for the security of their lives and property, for the just resolution of

grievances among them, that the above failure to faithfully execute the law, threatens the peace and domestic tranquility of the Republic.

III. The Law Employs The "Reasonable Time Rule" To Measure The Performance Of Duty Of Government Officials.

Sixty days for the partial delivery of the complaint and summons clearly breaches the concept of a reasonable time.

IV. The Law Gives The Defendants 20 Days To Answer The Complaint. That Is, 20 Days After All Six Defendants Have Been Served.

Because of the marshal's negligent perfor -- mance of duty, the 20 - day - law to Answer is so thwarted and distorted as to indicate a contempt for the law and the judicial process.

WHEREFORE, PETITIONER PRAYS:

That a writ of mandamus issue from this court directed to the Honorable United States Marshal's Office for Massachusetts, and to the

Honorable John A. Berknes Jr., U.S. Marshal for Massachusetts, requiring said Honorable John A. Birknes Jr. to show cause on a day to be fixed by this court why mandamus should not issue from this court directing said Honorable John A. Berknes Jr. to make service on the defendants in civil action No. 75 - 3845 - M without further delay.

Respectfully submitted,

Owen F. Lyons pro se



UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS — Civil Action No. 75-3845-M

v.

JOHN F. FAGAN ET AL

November 19, 1975

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MURRAY, D.J.

RE: _ MOTIONS
-- that discovery procedures begin without awaiting answers,

--that discovery phase of the case begin at once,

-- seeking protective custody

"All Denied"

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS — Civil Action No. 75-3845-M

v.

JOHN F. FAGAN ET AL

November 24, 1975

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MOTION

The Court Schedule A Hearing On
The Plaintiff's Motions

Now comes the plaintiff to motion the court to schedule a hearing on the plaintiff's motions:
(1) authorization of a constable to make service of the complaint and,
(2) the writ of mandamus to the U.S. Marshal to serve the complaint on the defendants.

Reason For The Motion

Plaintiff wants his case to be moved beyond the present procedural log-jam to the substantive matters of the allegations listed in the complaint.

The plaintiff motioned for the employment of a constable to make service of the complaint. The court's silence on this motion had reassured the plaintiff that a constable was not necessary, that the court had determined that the complaint would be delivered in due course.

However, by three motions the plaintiff thought the court would recognize with displeasure an obvious impediment to the normal and expeditious extension of the court's jurisdiction over all the parties in the case.



As of this writing the following two defendants still remain outside the jurisdiction of the court because of negligence in making service:

Horst S. Filtzer, M.D., 1493 Cambridge St., Cambridge, Massachusetts, 02139

and E. M. Miner, M.D., 10242 Canoga Ave., Chatsworth, California 91311.

It is only prudent for the plaintiff to doubt the marshal's intentions at this point. Unexplained delay in making service is a cause for alarm that the case could be lost in a matter of weeks because of the marshal's failure to perform his duty which procedurally extends the court's jurisdiction over all the defendants.

The plaintiff, therefore, must take extraordinary legal procedures in order to prevent his cause from being lost, i.e. due to the failure of the court to have jurisdiction over all the parties at the time when the Statute of Limitations will have run out.

The November 10 Motion for leave to file a writ of mandamus to the U.S. Marshal remains poised for the discretionary action of the court. Judicial discretion here may take several forms; it may deny the motion or it may see the writ issued to the marshal. In still another way, the court may remain silent on the motion and thereby informally deny the motion.

Plaintiff's motion above seeks a hearing on the disposition of the motion to file for mandamus.

signed: Owen F. Lyons pro se

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS — Civil Action No. 75-3845-M

v.

JOHN F. FAGAN ET AL

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MOTION

To Serve And File Late The Defenses, Objections And Demand For Jury Trial Of Defendant Horst S. Filtzer

The Defendant, Horst S. Filtzer, moves for leave to serve and file late his defenses, objections and demand for jury trial. A supporting affidavit is attached hereto presenting the the grounds for said Defendant's Motion.

Laurence J. Bloom
Atty. for Def. Filtzer
99 Highland Ave.
Somerville, Mass. 02143
628-4910
January 13, 1976



UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS — Civil Action No. 75-3845-M

V.

JOHN F. FAGAN, ET AL

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Supporting Affidavit Of Attorney Laurence J. Bloom In Support Of Motion To Serve And File Late The Defenses, Objections And Demand For Jury Trial Of Defendant Horst S. Filtzer

I, Laurence J. Bloom, attorney for defendant, Horst S. Filtzer, depose and say as follows:
On January 12, 1976, I first received the file on this matter with the request to enter an appearance and defense on behalf of defendant, Horst S. Filtzer. The Amended Complaint, which had been served upon Dr. Filtzer in November of 1975, was originally referred to Dr. Filtzer's insurer. The insurer held the Complaint for a considerable period of time before notifying Dr. Filtzer that coverage was not afforded to him for the incidents set forth in the Amended Complaint. Immediately upon being so notified, Dr. Filtzer retained personal counsel, who with reasonable promptness, retained me as trial counsel.

Subscribed under the penalties of perjury this Thirteenth day of January, 1976.

Laurence J. Bloom
99 Highland Ave.
Somerville, Mass 02143

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS — Civil Action No. 75-3845-M

v.

JOHN F. FAGAN ET AL

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Answer Of The Defendant Horst S. Filtzer To Plaintiff's Amended Complaint

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FIRST DEFENSE

Answering to that portion of the Amended Complaint entitled "1. THE PARTIES", the Defendant, Horst S. Filtzer, admits that he is a physician who has, on occasion, practiced medicine at the Cambridge Hospital. As to all other allegations under that title, the said Defendant says that he is without knowledge or information sufficient to form a belief as to the truth of same.

Answering to that portion of the Amended Complaint entitled "2. JURISDICTION", said Defendant denies the jurisdiction of the Court under those sections of law cited or any other sections of law.

Answering to that portion of the Amended Complaint entitled "3. FACTS", said Defendant denies each and every allegation contained in said paragraphs.

Answering to the unnumbered section of the Complaint entitled "POST-OPERATION VISITS TO Defendant FAGAN", said Defendant is without knowledge or information sufficient to form a belief as to the truth of same.



Answering to that unnumbered section of the Complaint entitled "ALLEGATIONS", said Defendant denies each and every allegation contained therein.

SECOND DEFENSE

At the times and places alleged, the Defendant, Horst S. Filtzer, was acting as a public officer, wherefore he is immune from liability.

THIRD DEFENSE

This action has not been brought within the time specified by the General Laws of this Commonwealth.

FOURTH DEFENSE

This Court lacks jurisdiction of the subject matter of the within action.

FIFTH DEFENSE

The plaintiff has failed to state a claim upon which relief can be granted as to Defendant, Horst S. Filtzer.

DEMAND FOR JURY TRIAL

The Defendant, Horst S. Filtzer, demands trial by jury.

Laurence J. Bloom
Atty. for Def. Filtzer
99 Highland Ave.
Somerville, Mass. 02143
628-4910

January 13, 1976

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS — Civil Action No. 75-3845-M

v.

JOHN F. FAGAN ET AL

MOTION

For Consideration Of The Fourth And Fifth Defenses Of Defendant, Horst S. Filtzer

The Defendant, Horst S. Filtzer, moves that the Court give consideration to and make determination upon his Fourth and Fifth Defenses listed in his Answer.

No hearing is requested upon this Motion.

Laurence J. Bloom
Atty. for Def. Filtzer
99 Highland Ave.
Somerville, Mass. 02143
628-4910

January 13, 1976

Certificate of Service requirements met.



UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS — Civil Action No. 75-3845-M

v.

JOHN F. FAGAN ET AL

February 4, 1976

Interrogatories
To Defendants

I.

The plaintiff hereby requests that the defendant Hospital (The City Of Cambridge) answer under oath in accordance with Rule 33 of the Federal Rules Of Civil Procedure, the Interrogatories numbered 1 through 17.

1.
Does the defendant maintain records of all persons who practice or have practiced medicine at the Cambridge Hospital?

2.
If your answer to the preceding interrogatory is in the affirmative, please state:
a. The name of the keeper of the records.
b. The location and availability of these records for the purpose of public inspection.

3.
Does the Cambridge Hospital maintain records of all physicians who briefly visit the hospital for purposes of study, observation, or as assistants to staff doctors?

4.
Does the Cambridge Hospital maintain records of all physicians who perform or assist in operations, together with assisting nurses?

5.
Does the Cambridge Hospital maintain records of doctors who are assigned to prepare reports on the physical and mental health of patients scheduled for surgery?

6.
Does the defendant Hospital maintain records of thedoctors who prepared written reports based on the mental and physical examinations of the plaintiff prior to surgery?

7.
If your answer to the preceding interrogatory is in the affirmative, please state the full names of these doctors and whether their reports are based on physical or mental examinations or both.

8.
Was defendant Fagan present at the operation performed on the plaintiff at the Cambridge Hospital on February 8, 1973?

9.
Please list the names of all physicians, assisting physicians, consulting physicians present, and all nurses and technicians assisting in the surgery performed on the plaintiff at the Cambridge Hospital on February 8, 1973.

10.
Please state the names of any physicians listed below who practiced medicine at the Cambridge Hospital at any time and in any capacity during the period from January 1, 1973 to February 30, 1973.

Brown, Albert A.
Brown', Arthur E.
Brown, Bruce Rowe
Brown , Charles Bruce
Brown, Clarence
Brown, Clark Edward
Brown, David Acheson
Brown, David Edward



10. (continued)

Brown, Donald Paul
Brown, Earl Olmstead Jr.
Brown, Edward Meigs
Brown, Ethan Allen
Brown, F. Harold
Brown, Frederick Simpson
Brown, Hathorn Parker
Brown, Henry (Waban)
Brown, Henry S. (Medford)
Brown, Herbert Northcott
Brown, Josiah Whitney
Brown, Kenneth Howard
Brown, Lawrence Leonard
Brown, Richard Keith
Brown, Robert Keith
Brown, Robert Stephen
Brown, Robert Willard
Brown, Thomas Reed III
Brown, Theodore Edmd.
Brown, Thornton
Brown, Walter U. Jr.
Brown, William Farrar
Brown, William Jay Jr.

11.
If your answer to the preceding interrogatory does record doctors' names taken from the list of doctors named "Brown", please state:
a. identification, including name and address.
b. the dates of such practice at the hospital.
c. The capacity and purpose of such practice.
d. the doctor's medical specialty.

12.
Have any of the physicians listed under the name "Brown" in interrogatory number 10 above been employed by Defendants Fagan, or Mangano, or Filtzer in a professional capacity at the Cambridge Hospital at any time?

13.
Please state the plaintiff's x-ray number and barium enima report which form the tests ordered by Dr. A. Mahlowitz sometime in the late 1960's or early 1970's.

14.
Does the hospital record contain my written request that these x-rays be sent to defendant Fagan, this request being made immediately following consultation with Dr. Mahlowitz and his determination that a hernia was indicated?

15.
Does the City of Cambridge provide the defend ant hospital with liability insurance as a protection against malpractice claims which might be filed against the hospital by former patients such as the plaintiff?

16.
If your answer to the preceding interrogatory is in the affirmative, please:
a. identify your insurer by name and address
b. indicate the limits of your policy.

17.
Does the Cambridge Hospital as a corporate entity distinct from the City of Cambridge carry hospital liability insurance as protection against malpractice claims?

II.

The plaintiff hereby requests that the defendant Fagan answer under oath in accordance with Rule 33 of the Federal Rules of Civil Procedure, the Interrogatories numbered 18 through 43.

18.
In what year did the plaintiff first become your patient for care and treatment following an operation at the Veteran's Administration Hospital in Jamaca Plain?



19.
In what hospital did you treat the plaintiff?

20.
From your examination of the plaintiff's wound what problem or ondition was the surgery which produced the wound designed to correct?

21.
What conditions would require the surgical cutting evident in the wound?

22.
What was the length and shape of the opening which the surgery produced?

23.
Did the plaintiff tell you he believed that the operation was to correct a fissure in the anus ring?

24.
Was the anus ring completely removed by the operation?

25.
Was the anus opening changed from a normal round opening to a slit deliberately lengthened to measure an inch long?

26.
Did the surgery produce the appearance of a vulva?

27.
Did you have an ethical duty to inform the plaintiff that the wound created by surgery at the Veter an's Administration Hospital was a deliberate mutilation?

28.
Was the plaintiff's general and overall health and well being the purpose of your medical examinations in 1973 and 1974?

29.
List the dates the plaintiff visited you following the hernia operation together with the purpose of the

visits, your diagnosis and treatement.

30.
In your examinations of the plaintiff in 1973 and 1974 did you note or record in any way the appearance of deep wrinkles on the plaintiff's face?

31.
Did you advise the plaintiff that the facial wrinkles should be expected following the sudden loss of 40 pounds?

32.
In your medical knowledge what disorder or disease is indicated by such deep facial wrinkles in a man of 44 years.

33.
In his last visit to you in 1975 what in your examination of the plaintiff prompted you to recommend that he visit a ps ychaiatrist whom you knew at the Cambridge Hospital?

34.
At each visit following the hernia operation did the plaintiff express his fear of death from cancer which he believed you were concealing from him?

35.
What symptoms did he describe to you that led him to believe he was dying from cancer?

36.
From your interviews of the plaintiff concerning his sexual activity, describe his habits of masterbation and sexual intercourse.

37.
To a physician a "pantaloon hernia" describes what condition?

38.
If a "pantaloon hernia" involves a direct hernial sac and an indirect hernial sac:



38. (continued)
   a. Why does the pathology report cover only a single "left inguinal hernial sac"?
   b. Why does your post-operation report mention only a "large indirect hernial sac"?

39.
Does the term "pantaloon hernia" describe a shape visible to the eye upon examination?

40.
Does the term "pantaloon hernia" describe a condition detectable only by x-ray?

41.
In precise medical terminology is there any such incision as a "transverse incision"?

42.
Are not all incisions "transverse"?

43.
Your hospital report says, "A transverse incision was made over the internal abdominal inguinal ring on the left."
   a. Wouldn't it be more accurate and precise to write "An incision was made over the internal abdominal inguinal ring on the left."?

III.

The plaintiff hereby requests that each defendant physician answers separately under oath in accordance with Rule 33 of the Federal Rules of Civil Procedure, the remaining Interrogatories.

44.
If a defendant or the defendant's attorney expects to call any person as an expert witness at trial, please indicate, as to each such person:

44. (continued)

a. name, occupation title, business address, area of specialization, if any, and professional relationship to the defendant.

b. the substance of each opinion to which the defendant expects such person to testify and the data on which his opinions are based.

c. a complete bibliography of the textbooks, treatises, articles and other works which such person regards as authoritative on the subject matter on which he will be testifying.

d. the manner in which such person became familiar with the facts of the case.

e. a summary of the grounds for each opinion of each such person.

f. educational background of each such person.

45.
Do you carry professional liability insurance against malpractice claims which might be filed against you by the plaintiff and other patients.

46.
If your answer to the preceding interrogatory is in the affirmative, please:

a. identify your insurer by name and address.
b. indicate the limits of your policy.
c. state whether or not the policy was in effect on February 8, 1973.

47.
Has any insurance company ever suspended, revoked or refused to renew a professional liability policy covering you or any group with which you are associated?



48.
If your answer to the preceding interrogatory is in the affirmative, please:

a. recite the details of each such suspension, revocation or refusal of renewal.

b. state the name and address of each insurer involved.

c. state the date of each such suspension, revocation, or refusal of renewal.

d. state the reason therefor.

e. state the date, if any on which each such policy was reinstated.

49.
To a physician a "pantaloon hernia" describes what condition.

50.
Does the term "pantaloon hernia" describe a shape visible to the naked eye upon examination.

51.
Does the term "pantaloon hernia" describe a condition detectable by x-ray only.

52.
Does a "pantaloon hernia" always call for a herniorraphy.

53.
Would a protusion less than the size of a ping-pong ball between the thigh and the scrotum describe a pantaloon hernia.

54.
As with x-rays, is it necessary that a Sigmondoscopy be undertaken as a preparation for a hernia operation?

55.
In connection with preparations for a hernia operation, what is the purpose of a Sigmondoscopy.

56.
Under what conditions is the Sigmondoscopy usually employed.

57.
Is it usual to perform a sigmondoscopy on the day scheduled for a hernia operation.

58.
Among the various kinds of hernia operations, is the direct involvement with a spermatic cord a distinguishing characteristic of an operation to correct an inguinal hernia.

59.
Is the "indirect hernia" also called an "inguinal hernia".

60.
What is the hernia operation called in which there is little or no involvement with the spermatic cord.

61.
Would x-ray pictures or examinations reveal "a large lipoma" on the spermatic cord.

62.
Under what conditions is it necessary that a herniorraphy be performed.

63,
Are x-rays necessary to a decision to perform a herniorraphy.

64.
Would a herniorraphy be indicated by a physical examination which revealed a protrusion between the thigh and the scrotum, the protrusion being the size and shape of half a ping-pong ball.

65.
In percentage terms state the occurance of hernias:
a. requiring a herniorraphy
b. requiring the less radical operation.



66.
How long in hours and minutes was the plaintiff kept unconscious by anesthesia?

67.
How long in approximate hours and minutes does a herniorraphy take:
a. if there was no complication
b. if there was a complication in the operation on the plaintiff.

68.
If there was a complication in the plaintiff's case:
a. what was the complication.
b. how long did it interrupt the herniorraphy.

69.
For what organs of the body does the inferior mesenteric ganglion supply nerves and nerve endings.

70.
Is the healthy functioning of the inferior mesenteric ganglion a necessary condition for the normal enjoyment of sexual intercourse.

71.
In the case of malfunctioning inferior mesenteric ganglion, would the nerve endings contained in the foreskin of the penis cause rapid and severe inflamation of the foreskin during the natural friction of sexual intercourse.

72.
In what ways would the malfunctioning of the inferior mesenteric ganglion evidence itself:
a. in the penis
b. in the buttocks
c. in the rectum
d. in the leg muscles

73.
Has your practice or study included treatment of veterans or others whose disability required

treating the inferior mesenteric ganglion.

74.
If your answer to the preceding interrogatory is in the affirmative please describe your experience and knowledge in this field, together with any study courses taken and any published papers in this field.

75.
What muscles in the buttocks are controlled by the nerves and nerve endings:

a. from the inferior mesenteric ganglion.
b. from the Sacral plexus
c. from the Superior gluteal nerves.

76.
What muscles in the legs are controlled by the nerves and nerve endings:

a. from the inferior mesenteric ganglion
b. from the Sacral plexus
c. from the superior gluteal nerves.

77.
In the case of exposed inferior mesenteric ganglion would the passage of digestive wastes (stools) through the colon agitate the exposed nerves, thereby producing muscle tensions and sensations associated with sexual activity and pleasure.

78.
What nerves, if exposed or stimulated would produce muscle tensions and sensations associated with sexual activity or pleasure.

79.
What muscles in the buttocks and legs undergo the tensions and sensations associated with sexual activity and pleasure.



80.
From among the physicians named Brown listed in question 10, please state the full name of the Dr. Brown:

a. who may have interviewed the plaintiff on February 7, 1973.
b. who has practiced medicine at the Cambridge Hospital.
c. who is known to you personally
d. who has worked with you as a fellow professional, consultant, or assistant.

81.
What muscles and/or nerves work together to produce the muscle tensions and sensations associated with sexual pleasure and excitement in the:

a. penis
b. rectum
c. legs
d. buttocks

82.
Has your practice, experience, or study, or published papers dealt with the:

a. Sacral plexus
b. Superior gluteal nerves
c. inferior mesenteric ganglion
d. glutaeus maximus muscles

83.
If your answer to the preceding interrogatory is in the affirmative, please state the specifics of this experience, practice, study, or published papers.

84.
What would the physiological affects on the body be if a spermatic cord has an opening which allows sperm fluid to escape into the body cavity.

85.
Does it indicate a sperm fluid loss through an opening in the spermatic cord:

a. if masterbation while lying prone in bed can be done for hours without the normal need for the relief of ejaculation.

b. if masterbation while standing lasts less than five minutes at which time there is a compelling need to ejaculate.

c. if the scrotum and testes undergo only a partial tightening when masterbating while lying back in bed.

d. if while masterbating in a standing position, the scrotum and testes become fully tightened at ejaculation in several minutes.

86.
Why is there no pathology report in the hospital records of the "large lipoma" or tumor which Dr. Fagan's report indicates was removed from the spermatic cord.

87.
Medical literature indicates that the occurance of a tumor on the spermatic cord is rare. Express by percentage the chance of finding a tumor on the spermatic cord.

88.
Would a surgically produced opening in one spermatic cord so reduce the number of sperm which would be deposited during sexual intercourse as to make pregnancy unlikely.

89.
Would a surgically produced opening in one spermatic cord that was designed to allow the escape of sperm into the body cavity make a man functionally sterilized.



90.
At what number must the human sperm count register to be normal enough to produce a pregnancy.

91.
At what number would the human sperm count be so low that a pregnancy would be unlikely.

92.
Would a surgically produced opening in one spermatic cord which allows the escape into the body cavity of those hormones and fluids produced by the testicles cause :

a. a loss of body muscle tone

b. a loss of facial muscle tone which results in deeply groved wrinkles associated with very advanced age.

93.
Is the purpose of castration to deprive the body of the affects and function of the testicles.

94.
Would the purpose of castration then be accomplished by a surgically produced opening in a spermatic cord so that the hormones and sperm fluid produced in the testicles would be lost to the body by emptying into the body cavity.

95.
The plaintiff's hospital record written by Dr. Brown describes the plaintiff as having a "a fair amount of paranoia." Is paranoia characterized, in part, by hypervigilance or hyperalertness?

96.
Will amphetamine use produce, in part, a state of hypervigilance or hyperalertness.

97.
Would amphetamine use induce such hyperalertness as to account for the plaintiff's comment to his doctor:

> "But when I sat down for coffee in a shop and relaxed a little, I became sensitive to noise, esp. a clatter of dishes or glasses. I would jump right off my seat."
> (see Appendix B., Page 2, of MOTION: Court's Protective Custody, October 6,1975)

98.
Would amphetamine use cause wastes in the digestive system, the decending colon perhaps, to form large, 12 inch long stools.

99.
The plaintiff describes the two years following the hernia operation as being marked by extreme afternoon fatigue which daily overcame him and which required him to stay standing and moving while teaching school. In this Motion for the Court's Protective Custody, October 6, 1975, the plaintiff quotes his report to Dr. Miner:

> "The noon-time saw me eat well. But around an hour later I would become extremely tired and slow of movement and speech and with little patience for my class .. In order to function at all I had to stand on my feet. Even here I had occasion to doze and forget what I was talking about. Naps after school and 10:00 to bed did no good. I found that sweets eaten when I became drowsy revived me. Another solution was to eat no lunch in order to stay alert for the afternoon session."

Does the above suggest the influence of drugs.

100.
Are the body-secreted chemicals noradrenaline and dopamine psychologically essential to the generation of normal moods, appetites, desires, drives and consciousness which are part of a normal working day.



101.
Is it the function of noradrenaline and dopamine to arouse the person to be mentally awake and attentive.

102.
Would the interference with the function of noradrenaline and dopamine cause the person to be mentally sluggish, inattentive, and, perhaps, irritable.

103.
Is it the function of so-called antipsychotic drugs to block or deminish the arousal functions of noradrenaline and dopamine.

104.
Are there a dozen or more so-called antipsychotic drugs.

105.
Would the most important affect of administering an antipsychotic drug to a normal person be slowness of speech, forgetfulness, inability to concentrate, irritability, drowsiness, and a gradual reduction of wakefulness and consciousness.

106.
Might an antipsychotic drug account for the description by the plaintiff of his efforts to stay alert while teaching.

107.
Do sweets when eaten counter the affects of antipsychotic drugs and restore noradrenaline and dopamine influence thereby.

108.
Would antipsychotic drugs cause large, 12 inch long stools to build up in the decending colon before being eliminated as waste.

109.
Dr. Brown describes the plaintiff as having "a fair amount of paranoia." A main characteristic of this phychosis is delusion, which usually begins with a feeling of persecution.

Is it a delusion for the plaintiff to think he is well known in his community for 20 years of political activity such as:

a. candidate for city council and state repersentative;

b. two efforts to win a place on the ballot as a candidate for Congress in opposition to Zionist control of U.S. foreign policy, and in opposition to the Viet Nam War.

c. organizer and political writer in a 15 year effort to change the City Charter.

110.
With this political background as antagonist to many established political machines and personalities, might the plaintiff have ample reason to be more alert and guarded than others who have not had such political involvement.

111.
Might the plaintiff reasonably conclude that the malace required to mutilate his anus ring so that it would appear as a vulva, was the result of the influence of a powerful but perverted political enemy.

112.
Might the plaintiff conclude reasonably that the surgical exposure of nerves in his buttocks so as to feel sexual excitement was part of a continuing conspiracy against him by some who fancy having been offended by the plaintiff's political activity.



113.
In 1973 the plaintiff visited his doctor to report a 40 pound weight loss which pulled the neck muscles back to look typical of an elderly man. He also reported the persistence of afternoon fatigue and the unusual elimination of 12 inch long stools. Was it paranoia for the plaintiff to conclude from all this that he was ill and perhaps dying from cancer?

a. Was it paranoid to believe that the growing, stronger sensations of sexual excitement each morning were additional signals of immanent death.

114.
By the Spring of 1974 the plaintiff was regularly awakened in the early morning hours with very strong sensations of sexual excitment in the penis, legs and buttocks, a condition requireing him to stand up for a time for relief.
Would it be paranod to believe that this sexual excitement was the result of surgery calculated to cause, in a single man, a deep longing for the intimate personal union of marriage.

115.
Would it be paranoid to believe that the sex sensation was designed to occur as regularly as a bowel movement and would gradually unnerve the plaintiff, making him emotionally unstable and erratic or immoral in behavior.

116.
In the plaintiff's communications with the F.B.I. in August of 1975, he claims that on two occasions in the summer of 1974 he was served poisoned liquor which caused several hours of violent vomiting and vacating before he recovered.
(Clains of being poisoned are typical of paranoia.)

In the Spring of 1975, on a visit to the plaintiff's home, his brother became seriously ill after several hours of talk and coffee drinking. Several days later the plaintiff's brother died suddenly,

unexpectedly.

Was it paranoid for the plaintiff to suspect that the coffee was poisoned, just as the liquor had been poisoned in the summer of 1974?
(the plaintiff also became ill with a headache the following day.) Ed. following brothers visit.

a. Was it paranoid for the plaintiff to request physicians at the Cambridge Hospital to test the coffee?
(Plaintiff was advised that unless he could tell them what drug or poison totest for that it would be almost impossible to detect a a poison. The plaintiff took the coffee to the state police who said they would feed it to the mice to see what happens.)

117.
Was it paranoid for the plaintiff to see some crazy-quilt association in all this, i.e. early morning sexual excitement, the silence of the doctor, the poisoning of the last summer, and now the circumstances surrounding the illness and death of his brother.

118.
In the plaintiff's letter to Dr. Miner he tells of two occasions in June, 1975, when he visited a public lounge and was served liquor that caused him feelings of sexual excitement in the buttocks, sensations similar to those experienced in the early morning hours of each day.
Was it paranoid for the plaintiff to believe that something was surgically altered in his buttocks which could be readily activated by a drug?

a. Was it paranoid, at this point, to believe that the surgical alteration in his buttocks was performed to make him, his feelings and emotions, the subject of easy manipulation?



118. (continued)
b. Was it paranoid to believe that the druged drink and its affects were designed to outrage the plaintiff into making a public scene of accusation, anger, and violence, (i.e. the behavior of a paranoid schizophrenic.)

119.
The weeks following the above incidents saw the plaintiff wondering if the sensations in the buttocks was drug induced or surgically induced. Finally, unable to control the sexual sensations in the buttocks, which may now occur in the daytime as well as in the early morning hours, the plaintiff announced that Friday in July that he was going to file criminal charges against Dr. Fagan on Monday morning.

On Sunday, two days later, a second brother of the plaintiff died suddenly, unexpectedly.

Was it paranoid for the plaintiff to associate this death with his announcement to file criminal charges, and to associate with this all the other unexplainable events that occured since the hernia operation.

120.
Considering the seriousness of the malicious operation which the plaintiff alleges was performed upon him, and the consequences which would befall his doctors if he could prove his charges, is it paranoia to believe that even murder might be done to excite the plaintiff into incoherent and outraged accusations, hostility and violence.

121.
Was it paranoia or just outrage to prompt the plaintiff to silently depart for various destinations by airplane refusing, thereby, to attend the wake or funeral for his brother.

122.
Is it paranoia to see in Dr. Brown's written comments in the hospital records the prescription for surgical violence alleged to have occured to him during the hernia operation.

123.
Is it paranoia to interpret Dr. Brown's written comments in the record as the trained enthusiasm of a professional observer:

a. That the plaintiff was a male with female genital organs.

b. That the plaintiff's rectal area was a peculiar mons with a useful vulva.

124.
Is it paranoia to interpret Dr. Brown's written notes as advising:

a. exposure of the inferior mesenteric ganglion in each buttock thereby uniting the sensations on both sides of the rectum, i.e. surgery reminiscent of Dr. Guerin.

b. accomplish the deed without detection or punishment through a clever manipulation over two years of the plaintiff's paranoia.

c. There would be a perfect cover-up because the plaintiff would be converted into a hopeless institutionalized psychotic.

signed: Owen F. Lyons pro se



UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS — Civil Action No. 75-3845-M

v.

JOHN F. FAGAN ET AL

February 5, 1976

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MOTION
To Amend Complaint

Now comes the plaintiff to request the court to allow him to amend his complaint at this time.

signed: Owen F. Lyons pro se

signed: Owen F. Lyons pro se

Certificate of Service requirements met.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS — Civil Action
No. 75-3845-M

v.

JOHN F. FAGAN ET AL

February 5, 1976

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AMENDED COMPLAINT

I. The Parties

1.
The plaintiff, Owen F. Lyons, 28 Ellsworth Ave., Cambridge, Massachusetts, 02139, is a citizen of the United States, and of Massachusetts.

2.
Defendant John F. Fagan, 1679 Massachusetts Ave., Cambridge, Massachusetts, 02138, is a physician who practices medicine at the Cambridge Hospital, Cambridge, Massachusetts. He is a citizen of the United States and of Massachusetts.

3.
Defendant S. N. Mangano, 384 Huron Ave., Cambridge, Massachusetts, 02138, is a physician who practices medicine at the Cambridge Hospital, Cambridge, Massachusetts. He is a citizen of the United States and of Massachusetts.

4.
Defendant Horst S. Filtzer, 1493 Cambridge St., Cambridge, Massachusetts, 02139, is a physician who practices medicine at the Cambridge Hospital, Cambridge, Massachusetts. He is a citizen of the United States and of Massachusetts.



5.
Defendant Brown is a citizen of the United States. He is a physician who practiced medicine in February, 1973, at the Cambridge Hospital, Cambridge, Massachusetts.

Dr. Brown M.D.
c/o The Cambridge Hospital
1493 Cambridge St.
Cambridge, Massachusetts,
02139

6.
Defendant Hospital, The Cambridge Hospital, 1493 Cambridge St., Cambridge, Massachusetts, 02139, also to be identified as the City of Cambridge, a municipal corporation duly organized and existing under the laws of the Commonwealth of Massachusetts and having a usual place of business in Cambridge, Middlesex County.

7.
Defendant E. M. Miner, 10242 Canoga Ave., Chatsworth, California, 91311, is a citizen of the United States and of California. He is a physician who examined the plaintiff around August 1, 1975.

8.
Francis L. Comunale, defendant, is a citizen of the United States and of Massachusetts. He practices medicine at the Cambridge Hospital.

Francis L. Comunale,
The Cambridge Hospital
1493 Cambridge St.,
Cambridge, Massachusetts,
02139

9.
Defendant Leonora DeLaPena, formerly of 25 Beacon St., Somerville, Massachusetts, now practicing medicine in Connecticut or Rhode Island. She is a citizen of the United States.

9. (continued)

Leonora DeLaPena, M.D.
c/o The Cambridge Hospital
1493 Cambridge St.
Cambridge, Mass., 02139

## II. Jurisdiction

10.
Title 28 U. S. C. Code -- Chapter 85, Section 1331
Chapter 87, Section 1391 (b)
Massachusetts General Laws Chapter 260 Section 12

## III. Facts

11.
In 1958 plaintiff was admitted to the Veterans Administration Hospital, Jamaca Plain, for surgery to relieve a fissure of the anus ring. V. A. physicians removed the anus ring and left a simulated vulva.

12.
Defendant Fagan attended to the plaintiff's care for five days following the operation at the Cambridge Hospital without comment of the mutilation received at the V. A.

13.
After the passage of some 15 years in which time the plaintiff had no contact with Defendant Fagan, the plaintiff was admitted to the Cambridge Hospital on February 6, 1973, as Dr. Fagan's patient to undergo surgery for a hernia. There was a protrusion half the size and shape of a ping-pong ball between the left thigh and the scrotum.



14.
There was no other lump or protrusion of any kind and the only pain was at the site of the protrusion between the thigh and the scrotum.

15.
On February 6, 1973, a urine sample and blood sample were taken but no other attention was paid to the plaintiff.

16.
On the next day, February 7, defendant Mangano noted in the hospital record that he was scheduled for a "herniorrhaphy" on February 8; there was no x-ray to lead him to believe that the radical form of operation was needed on February 7.

17.
On February 7, defendant Brown examined the plaintiff's penis, scrotum and anus. He then proceeded to question the plaintiff about his sex life. These handwritten notes are in the hospital record.

18.
Defendant Brown noted that the plaintiff lived alone with his elderly parents.

19.
Defendant Brown noted that the plaintiff had "a fair amount of paranoia."

20.
Defendant Brown noted that the plaintiff's testicles were in the scrotum but he did not think them very large.

21.
Defendant Brown noted that the plaintiff's anus was a "soft, non-tender, 0 mons, an arrhenomimetic rebound".

22.
Defendant Brown added, at this point, the word "guerin", The medical dictionary lists Guerin, a French surgeon (1816 - 1895) whose work involved connecting strands of nerve fibers which united like-structures, i. e. like the labia majora or, in the case of the plaintiff perhaps, the rectum.

23.
Finally defendant Brown outlined his plan for the operation. First he thought it most important that the problem be described as an inguinal hernia. The operation for this type of operation calls for a direct involvement with the spermatic cord.

24.
Defendant Brown then noted that a Sigmondoscopy should be done to see if there was any internal lession on the Sigmoid colon.

25.
Defendant Brown then noted that if there was no lession on the Sigmoid colon, then the key part of the plan could be performed, i. e. a herniorrhaphy (which is the radical form of hernia operation requiring internal cutting and sewing.

26.
The only notes in the hospital record on the day of the operation, February 8, are by defendant Fagan who views the problem to be a "pantaloon hernia". His post operation note describes his first cut as a "transverse incision".

27.
The hospital records show that defendant Filtzer assisted in the operation.

28.
The two anesthetists recorded in the hospital record are defendant DeLaPena and defendant Comunale.



29.
On February 8, 1973 all pre-operation examinations relative to the type of operation which had to be done were begun, i. e. x-rays, enemas. Standard hospital procedures call for these examinations to be completed the day before the operation, the very reason why the plaintiff was admitted on February 6 for an operation to take place on February 8.

Post Operation Visits To Defendant Fagan

30.
In October or November of 1973 plaintiff visited Defendant Fagan to express fears of death by cancer which plaintiff thought was concealed from him.

31. ( This number mistakenly omitted. )

32. Plaintiff told his doctor that he was constantly passing gas (farting), that he was passing every other day unusually large and long stools (12 to 14 inches long. )

33.
Plaintiff explained further that during a masterbation session the sexual sensation at ejaculation spread across the hernia scar.

34.
Plaintiff further complained of a large increase in the number of erections for no sexual reason.

35.
Plaintiff complained that although he had been dieting and exercising the extraordinary fall in weight in one month, 175 pounds down to 140, alarmed him.

36.
Defendant Fagan made physical examinations and had urine and blood tests taken. He reassured the plaintiff that he was in good health and prescribed an end to dieting and jogging and an increase in

36 (continued)
foods and sweets intake.

Second Visit To Defendant Fagan

37.
In January of February, 1974, plaintiff returned to defendant Fagan and renewed his belief that he was dying of cancer.

38.
The plaintiff complained of an unusual "bulging" in his waisteline, a lack of muscle tone above the hips and coming around to the navel.

39.
The plaintiff pointed to the whole section above the waisteline and under the rib case; he told the doctor that it seemed to be "caved in", as though the muscles and intestines in that area had been removed, because of cancer perhaps.

40.
The plaintiff related to the doctor that there were stirrings of sexual pleasure and excitement early in the mornings just before rising. The plaintiff was unable to pin point the locations of these sensations except that they were located in the pelvic area, the buttocks, and legs.

41.
The plaintiff renewed his reports of extra large and long stools and daily masterbation.

42.
Defendant Fagan made a physical examination, had blood and urine samples taken and declared the plaintiff in good health.

43.
The plaintiff still did not believe the doctor and began making arrangements in anticipation of death by cancer. He contacted several Jesuit priests and pressed them to accept a power of attorney empowering them to prevent surgery



when there was no prospect of recovery to a useful life. These priests convinced the plaintiff that he should delay action awhile, that perhaps he really was not dying.

Third Visit To Defendant Fagan

44.
In May of 1975 plaintiff returned to defendant Fagan and renewed his plea for information as to how much time he had to live.

45.
Plaintiff explained that he had good reason to demand this information because he thought that he was going to be married in the near future.

46.
Plaintiff renewed his concern for the extraordinary size of his stools.

47.
He said he was not happy that no explanation was forthcoming about the early morning sexual sensations in his legs and buttocks.

48.
Plaintiff's report of early morning masterbation episodes brought forth the comment from the doctor that the plaintiff should give up his interest in "girly" magazines.

49.
Defendant Fagan made another physical examination and advised the plaintiff that there was nothing physically wrong.

50.
However, the doctor continued, his diagnosis indicated serious mental disturbance and the plaintiff should visit a psychaitrist whom he knew at the City hospital. Plaintiff refected this advice.

51.
In June of 1975 plaintiff noticed a throbbing in two specific locations in the buttocks, ... from the rectum about three inches across and three inches up on each cheek.

52.
In July of 1975 plaintiff visited a Dr. Miner in Los Angeles, Cal., because the plaintiff's brother wanted to prove to the plaintiff that he really was not dying. This doctor said he could not find anything wrong.

53.
When the plaintiff told Dr. Miner that while on the beach early in July his buttocks became so sexually excited that the plaintiff could not keep his hands still.

54.
Dr. Miner noted that women report sensations of sexual pleasure while sun bathing.

55.
Dr. Miner's allusion to women together with his preoccupation and obvious interest in the plaintiff's anus, ... taking a long time wipping off the lubrication jelly used for the rectal-bladder examination ... these things alerted the plaintiff that something extraordinary had happened to the plaintiff without his knowledge.

Allegations

56.
Defendants surgically produced an opening in the left spermatic cord so that sperm from the Ductus diferens, as well as other fluids and hormones produced by the testicles, would be passed into the body cavity to be eliminated as body wastes.



57.
Defendants exposed nerves in the plaintiff's buttocks so that with each bowel movement, with the passage of a stool through the sigmoid colon, these exposed nerves excite muscle tension in the buttocks and legs and penis.

58.
The muscle tensions excited by the exposed nerves are the kind associated with sexual pleasure and sensation.

59.
The defendants exposed the Sacral plexus and/or the Superior gluteal nerves which are located in the glutaeus maximus muscles.

60.
The defendants exposed the inferior mesenteric ganglion in each buttock so that stools passing through the colon would excite these nerves thereby creating muscle tensions in the buttocks and legs, in addition to exciting the nerve endings in the penis and rectum, all giving sensations of sexual pleasure.

61.
The defendants have created a paghological condition in the plaintiff's penis by the exposure of inferior mesenteric ganglion which will deny to plaintiff the normal and natural pleasures of sexual intercourse.

62.
Defendant Miner of California knew, or by examination gained knowledge of the plaintiff's condition. His concealment of the facts from the plaintiff risked the physical and mental health of the plaintiff.

63.
Anesthetists Leonora DeLaPena and Francis L. Comunale kept the plaintiff unconscious during the time they knew the plaintiff was the victim of unspeakable and dishonorable actions of fellow members of the medical profession.

64.
The plaintiff alleges the above harm done to him by the defendants because of their wilfull, wanton and reckless negligence, and their malicious misconduct.

RELIEF

65.
Plaintiff petitions the Court for ordinary and punative damages in money awards from the defendants as listed below:

| | |
|---|---|
| 1. Sterilization | $1,000,000 |
| 2. Castration | 1,000,000 |
| 3. Exposure of nerves | 1,000,000 |
| 4. Pain and suffering | 1,000,000 |
| | 4,000,000 |

signed: Owen F. Lyons pro se
February 5, 1976



UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS — Civil Action No. 75-3845-M

v.

JOHN F. FAGAN ET AL

February 12, 1976

MOTION OF THE DEFENDANT
S. N. Mangano For a Protective Order
Staying The Time Within Which Plaintiff's
Interrogatories Should Be Answered

Now comes the defendant, S. N. Mangano, in the captioned case and states that there are presently pending motions to dismiss on procedural, substantive grounds that have a reasonable likelihood of being allowed whereupon this case would be at an end. Therefore, the defendant, S. N. Mangano, asks that he not be required to answer the interrogatories propounded by the plaintiff to him in this case until the motions currently pending are acted upon. The defendant submits that the plaintiff's interrogatories are not designed to elicit any information that would assist the plaintiff in resisting the pending motions. The defendant, Dr. S. N. Mangano, requests oral argument for this motion and states that no more than ten minutes will be required for argument.

By his attorney,

Jared H. Adams

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS — Civil Action
No. 75-3845-M
v.
JOHN F. FAGAN ET AL

February 12, 1976

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MOTION
Of the Defendant, Dr. Fagan
For a Protective Order Staying The Time
Within Which Plaintiff's Interrogatories Should
Be Answered

Now comes the defendant, Dr. Fagan, in the captioned case and states that there are presently pending motions to dismiss on procedural and substantive grounds that have a reasonable likelihood of being allowed whereupon this case would be at an end. Therefore, the defendant, Dr. Fagan asks that he not be required to answer the interrogatories propounded by the plaintiff to him in this case until the motions currently pending are acted upon. The defendant submits that the plaintiff's interrogatories are not designed to elicit any information that would assist the plaintiff in resisting the pending motions. The defendant, Dr. Fagan, requests oral argument for this motion and states that no more than ten minutes will be required for argument.

By his attorney,

Jared H. Adams



UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS — Civil Action
No. 75-3845-M
v.
JOHN F. FAGAN ET AL

February 18, 1976

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Opposition Of Defendant Horst S. Filtzer
To Plaintiff's Second Motion To Amend
Complaint

The Defendant, Horst S. Filtzer, by his Attorney, opposes the motion of Plaintiff Owen F. Lyons, Pro Se, to allow further amendment of the Compaint, which motion is dated February 5, 1976.

As ground for his objection, the Defendant, Horst S. Filtzer, avers that the proposed amendment does not correct the defects which are the subject of the fourth and fifth defenses of the Defendant, Hosrst S. Filtzer, as well as Motions to Dismiss now docketed on behalf of Defendants Fagan and Mangano, and no useful purpose would be served by the further amendment.

The Defendant Filtzer requests no oral argument on his objection to the aforesaid motion.

Laurence J. Bloom
Attorney for Defendant Filtzer
99 Highland Avenue.
Somerville, Mass. 02143

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS — Civil Action No. 75-3845-M

v.

JOHN F. FAGAN ET AL

February 18, 1976

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MOTION
Of Defendant Horst S. Filtzer
For An Order Staying The Time Within
Which Plaintiff's Interrogatories Must
Be Answered

The Defendant, Horst S. Filtzer, moves that an order be entered staying the time within which this Defendant must answer the plaintiff's interrogatories until action has been taken upon the motion of Defendant Filtzer for consideration of his fourth and fifth defenses.

As ground for this motion, Defendant Filtzer avers that there will be no necessity for answering interrogatories should the complaint be dismissed for lack of subject matter, jurisdiction or failure to state a cause of action and that the interrogatories appear onerous and burdensome in both their length and complexity, wherefore the necessity for answering said interrogatories should await the outcome of the defendant's motion.

No hearing is requested upon this motion.

Laurence J. Bloom
Attorney for Defendant Filtzer
99 Highland Avec
Somerville, Mass. 02143

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UNITED STATES DISTRICT COURT
DISTRICT FOR MASSACHUSETTS

OWEN F. LYONS — Civil Action No. 75-3845-M

v.

JOHN F. FAGAN ET AL

February 27, 1976

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APPEARANCE OF COUNSEL

Kindly enter our appearance on behalf of the defendant, Horst S. Filtzer and the defendant, Cambridge Hospital

Edward D. McCarthy
McCarthy Associates, P.c.
341 Broadway
Cambridge, Ma. 02139
661 - 7100

McCarthy Associates. P.C.
Attorneys At Law
341 Broadway
Cambridge, Mass. 02139

February 26,
1976

Clerk
United States District Court
For Massachusetts

RE: Owen F. Lyons
v.
John F. Fagan Et Al

Dear Sir:
Enclosed for filing please find the following:

1. Appearance of Counsel.
2. Motion to Dismiss
3. Motion for a Protective Order staying the time within which Interrogatories must be answered.
4. Motion to strike Complaint, Amended Complaints, and Interrogatories (Rule 11).

On behalf of the defendants whom I represent, request is made for oral argument on said motions. It is anticipated argument would not exceed 10 minutes.

Very truly yours,

Edward D. McCarthy



UNITED STATES DISTRICT COURT
DISTRICT FOR MASSACHUSETTS

OWEN F. LYONS — Civil Action
v. — No. 75-3845-M
JOHN F. FAGAN ET AL

February 26, 1976

MOTION
OF DEFENDANTS

Horst S. Filtzer and Cambridge Hospital to strike plaintiff's complaint, Amended Complaints and Interrogatories (Rule 11)

Now come the defendants in the above-entitled action and move that this Honorable Court strike the plaintiff's complaint, amended complaints and interrogatories pursuant to Rule 11, FRCP, on the grounds that they are scandalous and indecent.

Edward D. McCarthy
341 Broadway
Cambridge, Ma. 02139

Certificate of service requirements met.
I further certify that I have been unable to serve a copy upon the defendant, Dr. Brown, M.D., there being no address of record for said defendant.

Edward D. McCarthy

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS — Civil Action
No. 75-3845-M

v.

JOHN F. FAGAN ET AL — February 26, 1976

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MOTION OF DEFENDANTS

Horst S. Filtzer and Cambridge Hospital
For a protective order staying the time
Within which plaintiff's interrogatories
Must be answered.

Now come the defendants Horst S. Filtzer and Cambridge Hospital and state that there are presently pending before this Honorable Court, Motions to Dismiss the above action on procedural and substantive grounds, which motions have a reasonable likelihood of allowance.

Wherefore said defendants request that this Court order that the said interrogatories need not be answered until currently pending motions are acted upon by the Court.

In support of said motion, defendants submit that said interrogatories are not designed to elicit any information that would assist the plaintiff in resisting the pending motions and that further said interrogatories are scandalous and burdensome in both their length, complexity and unintelligibility.

Edward D. McCarthy
Attorney for defendants

Certificate of service requirements met.
I have been unable to serve a copy on Dr. Brown M. D.... no address of record.
Edward D. McCarthy



UNITED STATES DISTRICT COURT
DISTRICT FOR MASSACHUSETTS

OWEN F. LYONS — Civil Action
No. 75-3845-M

v.

JOHN F. FAGAN ET AL

February 26, 1976

DEFENDANTS' MOTION TO AMEND
MOTION TO DISMISS

Now come the defendants, Horst S. Filtzer and Cambridge Hospital in the above-entitled matter and move this Honorable Court to amend the Motion to Dismiss by adding ground #5, as follows:

5. This Honorable Court lacks jurisdiction of the subject matter of the plaintiff's claim since there are no allegations to support a basis for diversity of citizenship, any substantive federal question or any other basis

Edward D McCarthy
Attorney for defendants

Certificate of service requirements met.
I further certify that I have been unable to serve a copy upon the defendant, Dr. Brown M. D. there being no address of record for said defendant.

Edward D. McCarthy

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS — Civil Action
No. 75-3845-M

v.

JOHN F. FAGAN ET AL

February 27, 1976

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MOTION OF DEFENDANTS
John F. Fagan, M.D. and S.N. Mangano M.D. to strike plaintiff's complaint, amended complaints and interrogatories (Rule 11)

Now come the defendants Fagan and Mangano, in the above-entitled action and move that this Honorable Court strike the plaintiff's complaint, amended complaints and interrogatories pursuant to Rule 11, FRCP, on the grounds that they are scandalous and indecent.

Jared H. Adams
Attorney for defendants
148 State St.
Boston Ma. 02109

The defendants request an oral argument for this motion and state that no more than ten minutes will be required for argument.

(Certificate of service requirements met.)
I further certify that I have been unable to serve a copy upon the Defendant, Dr. Brown, M.D., there being no address of record for such defendant.

Jared H. Adams



UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS — Civil Action
75-3845-M

v.

JOHN F. FAGAN ET AL

April 1, 1976

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MOTIONS

1. The Court grant the Motion to Allow the Amended Complaint, dated February 5, 1976
2. The Court Require the defendants to Answer the Interrogatories according to the Rules of Civil Procedure.
3. The Court Order Physical Examinations of the plaintiff by Court Appointed Physicians.

Now comes the plaintiff to motion the Court to grant the above Motions.

Two months have passed since the plaintiff submitted his Amended Complaint designed to expand the jurisdiction of the Court over additional defendants.

In addition, the defendants have not observed the Rules regarding the time within which they Are required to Answer the Interrogatories.

signed: Owen F. Lyons pro se

(Certificate of Service requirements met.)

UNITED STATES DISTRICT COURT
DISTRICT FOR MASSACHUSETTS

OWEN F. LYONS — Civil Action 75-3845-M

v.

JOHN F. FAGAN ET AL

April 1, 1976

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MOTION

The Court Affirm Its Jurisdiction Over the Parties and Over the Subject Matter Of the Case.

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Now comes the plaintiff to motion the Court to rule on the motion to dismiss, Ground #5 which reads:

"5. This Honorable Court lacks jurisdiction of the subject matter of the plaintiff's claim since there are no allegations to support a basis for diversity of citizenship, any substantive federal question or any other basis."

Reason For The Plaintiff's Motion Above

1. The plaintiff alleges in his Complaint and amended complaints that Dr. E.M. Miner of Chatsworth, California, was engaged by the plaintiff for a medical examination.

2. During this examination Dr. Miner advised the plaintiff, according to the complaint, that strong sexual sensations in the buttocks of the plaintiff while he was sun bathing on a beach was not unusual, that women often report sexual sensations in the buttocks while sun bathing.

3. This advice was a misrepresentation of fact made by a medical doctor who holds himself out to the public as an expert on human physiology.



4. This misrepresentation of fact is actionable in a court of law, the damages for which depending upon the harm coming to the plaintiff because of his reliance on this misrepresentation.

5. However, this misrepresentation of fact when placed within the context of the plaintiff's allegation against the other defendants, becomes a serious matter indeed.

6. Finally, the allegation against the defendant Miner is sufficient ... a complaint should be as brief and concise as possible, containing only those details and facts necessary to an understanding of the allegations made in the complaint.

7. However, it is recognized good practice to join actions which concern the same subject matter i.e. both the alleged criminal surgery and the alleged misrepresentation of fact deal with the physical health of the plaintiff.

8. The joining of the two causes of action has created a diversity of citizenship among the defendants, most of the defendants being citizens of Massachusetts, one defendant being a citizen of California.

9. Cases involving diversity of citizenship properly come within the jurisdiction of a federal court.

Owen F. Lyons pro se

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS — Civil Action 75-3845-M

v.

JOHN F. FAGAN ET AL

April 1. 1976

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MOTION

The Court Make Separate Rulings On:
(1) The motion to strike the complaint and the amended complaints and
(2) The motion to strike the Interrogatories.

Now comes the plaintiff to motion the Court to consider separately, (1) the motion to strike the complaint and amended complaints and (2) the the motion to strike the Interrogatories.

Reason For The Motion

The complaint and amended complaints are documents setting forth as briefly as possible the essential allegations being made against the defendants.

The Interrogatories, on the other hand, are made to elicit information concerning any and all matters that may have a bearing, however remote, on the allegations contained in the complaint.

The distinction is crucial. Allegations in the complaint that are remote or have only a slight bearing or relevency to the essential wrongdoing set forth in the complaint, may properly be found by the Court to be scandalous, in which case the whole complaint is striken.

On the other hand, an issue raised in a question in the Interrogatory may be found by the Court to be objectionable and so strike it from



the Interrogatory. Such action by the Court is not fatal to the whole Interrogatory however.

Owen F. Lyons pro se

(Certificate of service requirements met.

UNITED STATES DISTRICT COURT
DISTRICT FOR MASSACHUSETTS

OWEN F. LYONS — Civil Action
75-3845-M

v.

JOHN F. FAGAN ET AL

April 1, 1976

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MOTION

The Court Deny The Motions To
Strike The Complaint And The
Amended Complaints As
Scandalous And Indecent

Now comes the plaintiff to motion the Court to deny the motions to strike the complaint and amended c omplaints on grounds that they are scandalous and indecent.

Nowhere do the defendants whow the Court instances of scandalous or indecent language or allegations.

Nowhere do the defendants cite irrelevant, impertinent, irreverent, indelicate or unnecessary allegations.

The Complaint and amended complaints have been prepared and presented with the reservation and good taste necessary for practice before this nation's courts.

Oral hearings before this court as requested by the defendants would not meet the test here proposed, ... that the defendants in written briefs to this court cite specific instances of scandalous or indecent language or allegations together with the reasons why they are scandalous or indecent.



Reasons for the Motion

1. Surgery was performed by the defendants which allegedly affected the organs of reproduction and excretion. The allegations about this surgery had to describe how these organs of reproduction and excretion were affected.

2. It was the Veterans Administration physicians who removed the anus ring and left a resemblance to a vulva. This had to be recorded in the complaint in order to understand the comments by Dr. Brown about the plaintiff's rectum.

3, It was unfortunate that surgery allegedly exposed nerves in the plaintiff's buttocks. This is a necessary conclusion derived from the defendant's need to (1) employ a Sigmondoscopy examination prior to the operation, and (2) make reference to the French physician Guerin operations connecting nerve fibers to unite like structures, e. g. the rectum, and (3) the sexual sensa- in the buttocks, rectum, penis, and legs which occur by the passing of a stool through the Sigmoid colon.

4. Finally, the allegations of sterilization and castration are conclusions derived from the attempt to explain why the defendants would bother to expose the nerves in the buttocks; the plaintiff concluded that the exposure of the nerves was to cover-up the physiological affects of castration, (i. e. loss of energy, lethargy, fatigue, sexual indifference and impotence.)

Owen F. Lyons pro se

(Certificate of service requirements met.)

UNITED STATES DISTRICT COURT
DISTRICT FOR MASSACHUSETTS

OWEN F. LYONS — Civil Action No. 75-3845-M

v.

JOHN F. FAGAN ET AL

May 1, 1976

MOTION

The Court Resolve The Conflicting Motions Awaiting Judicial Disposition

Now comes the plaintiff to motion the Court to resolve the conflicting motions awaiting judicial disposition.

With obvious reference to the allegations of wrongdoing before the court, the plaintiff believes his physical security remains seriously threatened during this present judicial impasse.

Owen F. Lyons pro se

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Certificate of Service

This is to certify that this motion has been mailed first class postage paid to the following:

Jared H. Adams, Atty. for def. Fagan, , Mangano

Laurence J. Bloom, Atty. for def. Filtzer
E. M. Miner, Defendant, Chatsworth, Cal.
Dr. Brown, M. D., def. c/o Cambridge Hospital
Edward D. McCarthy, atty. for def. Filtzer
and Cambridge Hospital

Owen F. Lyons pro se



UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS — Civil Action No. 75-3845-M

v.

JOHN F. FAGAN ET AL

May 10, 1976

MOTION

The Court give first priority to the plaintiff's allegations of violence and atrocity, with routine Court business of a non-violent nature being assigned a secondary order of urgency.

Now comes the plaintiff to motion the Court to give first priority to the plaintiff's allegations of medical malpractice involving intentional violence and atrocity.

In Federal practice routine Court business dealing with non-violent matters have always been given secondary importance to the right of citizens to be secure in their persons and effects.

The Federal Courts' priorities and sense of urgency always become evident when there are allegations of a continuing conspiracy to commit violence in the cover-up of illegality.

Unaccountably, however, the court seems to have assigned the plaintiff's allegations of malicious and perverted medical malpractice a very low order of priority.

Owen F. Lyons pro se

(Certificate of service requirements met.)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PLEASE TAKE NOTICE that the following cases have been scheduled for hearing on defendants' motions to dismiss on Thursday, May 20, 1976 at 10 AM in Courtroom #4, 12th floor, Post Office &Courthouse Bldg., Boston, Mass. by Judge Murray.

CA 74-1068-M BERTOLI OIL CO., INC.
(Russell Higley)
v.
MOBIL OIL CO., INC., ET AL
(John Birmingham)
(William Brown)

CA 74-2897-M Nathaniel Denman, Et Al
(Pro Se)
v.
Charles W. Colson
(Gordon P. Ramsey)

CA 75-554-M Robert M. Delong, Jr.
(Pro Se)
v.
U.S. Constitution
(William Brown)

CA 75-3845-M Owen F. Lyons pro se
v.
Dr. John F. Fagan, Et Al
(Laurence Bloom)
(Jared H. Adams)

By the Court,
Nina Singer
Deputy Clerk

May 12, 1976



UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil 75-3845-M Murray, D.J.

OWEN F. LYONS
v.
JOHN F. FAGAN ET AL

Hearing on Defendants' motions to dismiss.

APPEARANCES:

Jared Adams, Esquire for the Defendants Fagan and Mangano

Edward McCarthy, Esquire for the Defendants Cambridge Hospital and Dr. Filtzer

Owen F. Lyons, Pro Se

Courtroom No. 4
Federal Building
Boston, Mass.
May 20, 1976

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THE COURT: I will hear the moving party.

MR. ADAMS: May it please the Court, there are several moving parties here, each of us represents several of the defendants.

THE COURT: You take it in the order which you desire, and I will hear you separately.

MR. ADAMS: Your Honor, I represent Doctors FAGAN and MANGANO. The defendants have brought two motions to dismiss in this action, the first one being on a lack of jurisdiction. A brief has been filed with the

Court and copies given to the other attorneys. The defendants in this action do not constitute the diversity required for this Court.

The second motion to dismiss is based on the ground that the complaint is scandalous.

THE COURT: I will hear the other moving parties

MR. McCARTHY: If your Honor please, on behalf of the defendant Filtzer and Cambridge Hospital, I concur in the statement of Mr. Adams relative to the motion to dismiss. I would just point out a case from this District Court, Marachi vs. Porter at 355 Fed. Sup,, Page 330. And if I could quote from that decision, "In order for the diversity of citizenship to exist, there must be complete diversity, that is none of the defendants may be a citizen of the same state as the plaintiff."

On that basis, I would ask that the motion be granted.

THE COURT: Any other defendant to be heard? I will hear the plaintiff.

MR. LYONS: Thank you, your Honor.

I submitted material, I submitted a motion to the Court to affirm its jurisdiction over the parties and over the subject matter of the case. It is quite obvious that there is jurisdiction. The parties are citizens of various states, and I don't see any problem.

I don't accept the, Mr. McCarthy's idea that everybody has to be everywhere with different citizenships.

THE COURT: Well, apparently, you disagree with decided authority on the point. This Court is not going to start blazing new trails.

The motions are granted on the ground diversity of citizenship does not occur as it is required under the code. Next matter.



## CERTIFICATE

I, James J. Gibbons, Official Reporter of the United States District Court, do hereby certify that the foregoing transcript from pages numbered 1 through 3, constitutes to the best of my skill and ability a true and accurate transcription of my Stenotype notes taken in the above-entitled action.

James J. Gibbons

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS — Civil Action
No. 75-3845-M

v.

JOHN F. FAGAN ETAL

June 11, 1976

MOTION

The Court allow a late filing amending the jurisdictional grounds upon which the plaintiff mistakenly relied to jurisdiction by virtue of the First and Fourteenth Amendments to the United States Constitution and the laws of the United States.

signed: Owen F. Lyons pro se

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Certificate of Service: This is to certify that this motion has been mailed first class postage paid to the following:

Jared H. Adams, Atty. for def. Fagan, Mangano
Laurence J. Bloom, Atty. for def. Filtzer
E.M. Miner, def., Chatsworth, California
Dr. Brown, M.D., def., c/o Cambridge Hospital
Edward D. McCarthy, Atty. for def. Filtzer and Cambridge Hospital

Owen F. Lyons, pro se



UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS — Civil Action
No. 75-3845-M

v.

JOHN F. FAGAN ET AL

June 11, 1976

MOTION

The Court extend its jurisdiction over the case because the obvious cause and effect relationship between the plaintiff's participation in the federal elections of 1968 and 1970 ... and his allegations of injury before the Court, involves:

1. the First and Fourteenth Amendments to the United States Constitution and their violation as a result of the plaintiff's participation in federal elections;

2. The Civil Rights Acts of the 1800's and the 1960's and the 1970's, the violation of these laws which:
   a. guarantee to the plaintiff lawful exercise of political action in federal elections; and which
   b. prescribe penalties, civil and criminal, for any interference with or conspiracy to interfere with a campaign for dederal office, or a vote for federal office; and which
   c. give jurisdiction to the federal courts over irregularities or allegations of violent political reprisals for political action in a federal election.

3. the admission and evaluation by a federal court of allegations of injury due to participation in a federal election.

4. the allegations that political reprisal took the form of criminal surgery designed to

   a. to cause gradual and continuing failure of body muscle tone due to castration;

   b. to cause the body, deprived by castration of strength and energy, to rely solely upon the nervous system to promote mental alertness and body body activity;

5. The instrumentalities used to accomplish the alleged wrongdoing were supplied and paid for by funds provided and authorized by federal law, i. e. hospital construction funds, costs of operating room equipment, and medical teaching facilities and staff.

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Now comes the plaintiff to move the court to employ the above jurisdictional grounds in order to continue the pre-trial proceedings in this case.

The plaintiff's allegations of wrongdoing to his injury are too extraordinary for the court to ignore to the detriment of the plaintiff and, more important, to the court's interest that lawful behavior prevail in the conduct of licensed professions.

The court's appointment of physicians as court officers to examine the plaintiff would best serve the ends of a society governed by a respect for a body of law that punishes or protects without reference to position or privilege.

The Court's powers of investigation here are virtually unlimited and would not be prejudicial to any party in pre-trial proceedings designed to establish the truth.



In this case the plaintiff's allegations, if false, should finally be set aside by the court to protect the defendants. That the allegations could be true makes it imperitive th at the court intervene to protect the plaintiff from further injury.

The plaintiff's allegations of injury are particularly offensive to our sense of justice and fair play because such injury could not be accomplished without a suspension of law and ethics governing the behavior of professional people.

No one politician, no single vindetta could enlist the active participation of so many physicians and hospital staff personnel in the castration of the plaintiff.

The plaintiff believes his political views as expressed in recent federal elections, views offensive to religious groups, have prompted organized religion and affiliated groups to conspire to suspend the plaintiff's protections under the U. S. Constitution and under the laws of the United States; the defendants in this case are all past performance honorable professionals, leading the plaintiff to conclude that they are mere tools in a conspiracy of organized religion.

The fact of conspiracy must be argued to, must be sought through an investigation of all the circumstances surrounding a criminal act. Few conspiracies are uncovered by the declarations of participants.

A judicial finding of conspiracy is derived from an investigation into a felony, in an attempt to establish a common plan of the participants to feloniously injure an individual or society. The court has the power and obligation to investigate the allegations of injury.

Owen F. Lyons pro se

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS — Civil Action
No. 75-3845-M

v.

JOHN F. FAGAN ET AL

June 15, 1976

MOTION

Motion in opposition of the defendants John F. Fagan, M.D. and S.N. Mangano to the plaintiff's motion for a late filing of a motion to amend and to the plaintiff's motion to amend itself, said motions being dated June 11, 1976.

As ground for their objections the defendants John F. Fagan and S.N. Mangano aver that the proposed amendments do not correct the defects which were the cause for the dismissal, and secondly the filing of said motion is untimely as no leave had been asked at the time of the Motion to Dismiss for leave to Amend, and no useful purpose would be served by allowing such amendment as it certainly would not correct the other defect of 12 (b) (6) under the Federal Rules of Civil Procedure, that the complaint did not state a proper cause of action.

The defendants request no oral argument on their objections to the aforesaid motions.

Jared H. Adams
Attorney for defendants Fagan and Mangano
148 State St.
Boston, Mass. 02109

(Certificate of Service requirements met.)
I further certify that I have been unable to serve a copy upon the defendant Dr. Brown, M.D. there being no address of record for such defendant. Jared H. Adams



UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS — Civil Action
No. 75-3845-M

v.

JOHN F. FAGAN ET AL

June 23, 1976

Opposition Of Defendants, Horst S. Filtzer And Cambridge Hospital To Plaintiff's Motion To Amend

The defendants, Horst S. Filtzer and Cambridge Hospital oppose the motion of the plaintiff dated June 11, 1976 on the grounds that no leave to amend had been granted by the Court at the time of allowing Defendants' Motion to Dismiss and that the proposed Amendment does not confer any jurisdiction on this Honorable Court and further that the complaint together with the numerous amendments filed by the plaintiff do not state a claim upon which relief may be granted pursuant to FRCP 12 (b) (6).

The defendants request that the Court summarily deny the plaintiff's motion in order to prevent further harassment and expense to the defendants.

No oral argument is requested relative to this objection.

Edward D. McCarthy
Attorney for Horst S. Filtzer
and Cambridge Hospital

(Certificate of Service requirements met.)
I further certify that I have been unable to serve a copy upon the defendant, Dr. Brown, there being no address of record for said defendant.
Edward D. McCarthy

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS — Civil Action
No. 75-3845-M

v.

JOHN F. FAGAN ET AL

July 13, 1976

MEMORANDUM and ORDER

MURRAY, D.J. This case is before the court on plaintiff's motion that "The Court allow a late filing amending the jurisdictional grounds upon which the plaintiff mistakenly relied to jurisdiction by virtue of the First and Fourteenth Amendments to the United States Constitution and the laws of the United States". Oppositions have been filed by several of the defendants.

The case earlier came on for hearing on the motions to dismiss of those defendants who have now filed oppositions to plaintiff's motion to amend his complaint. The pro se complaint in essence alleges tortious medical malpractice on the part of the defendants.[1] The complaint as filed alleged federal question jurisdiction, 28 U.S.C. # 1331 and noted venue in this district under 28 U.S.C. #1391 (b). The complaint also alleged jurisdiction under Mass. Gen. Laws ch. 260, # 12. This reference to a Massachusetts statute dealing with an unrelated issue[2] was apparently designed to invoke the court's jurisdiction under the diversity statute. 28 U.S.C. # 1332.

Despite the allegation in the complaint invoking the federal question jurisdiction, an examination of the complaint and the arguments of the parties led the court at the time of the previous hearing to the conclusion that there was no basis for federal question jurisdiction. The case appeared to rest solely on a state cause of action sounding in tort. Thus, if jurisdiction to hear this case existed at all it would have had to be found in the diversity jurisdiction.



At the hearing, counsel for defendants Fagan, Mangano, Filtzer and The Cambridge Hospital argued that the complaint on its face failed to meet the long-standing requirement of complete diversity. See Strawbridge v. Curtiss, 7 U.S. (3 Cranch) 267 (1806). Plaintiff contended that minimal diversity was sufficient. The court declined plaintiff's implicit invitation to overrule Strawbridge v. Curtiss, supra, and granted the motions to dismiss.

Plaintiff now returns with a motion to amend his jurisdictional grounds designed to rehabilitate his complaint. Under the authority of Fed. R. Civ. P. 15(a), the court, mindful of the adjuration that the allegations of a pro se complaint are held to less stringent standards than formal pleadings drafted by lawyers, Haines v. Kerner, 404 U.S. 519, 520, (1972), and may not be dismissed unless it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief", Conley v. Gibson, 355 U.S. 41, 45-46 (1957), will grant the plaintiff's motion to amend the complaint and reconsider sua sponte its jurisdiction to grant plaintiff the relief he seeks in his complaint.

With reference to the allegations of federal question jurisdiction, the complaint is frivolous. Plaintiff now seeks to bootstrap allegations of medical malpractice into violations of the First and Fourteenth Amendments and certain "Civil Rights Acts of the 1800's and 1960's" by asserting that the acts of the defendants have in some unspecified manner interfered with his "participation in the federal elections of 1968 and 1970 ...".

These fanciful assertions, even given the extra ordinary hospitality the federal courts are required to provide the pro se complainant, are insufficient to invoke the federal question jurisdiction. Cf. Mainelli v. Providence Journal Co., 312 F. 2d 3 (1st Cir. 1962).

Turning to the other possible alternative basis for jurisdiction to hear the matters os which plaintiff complains, the court finds that the complaint, as amended, continues to lack the required complete diversity of citizenship. In examining the complaint to determine whether this requirement is met as of the date of the commencement of the action, cf. Gaines v. Dixie Carriers, Inc., 434 F. 2d 52, 54 (5th Cir. 1970), and applying the relation back provision for amendments, Fed. R. Civ. P. 15 (c), it appears that all the defendants save one are alleged in the complaint, as amended, to be citizens of the same state as the plaintiff. The plaintiff has made no effort to recast his pleadings, even after the earlier hearing on the motions to dismiss, to secure complete diversity. Consequently, the amended complaint is insufficient to invoke the diversity jurisdiction of the federal courts.

Thus affording to plaintiff full opportunity to to rehabilitate his complaint, it now appears from the complaint, as amended, the court lacks jurisdiction to grant relief therunder, and accordingly the complaint is hereby dismissed.

Frank J. Murray
United States District Judge

FOOTNOTES

1. The plaintiff's complaint was originally filed on September 12, 1975. Plaintiff amended his complaint on October 17, 1975, prior to the



serving of any responsive pleadings, as is his right under Fed. R. Civ. P. 15 (a). It is the October 17 complaint that the court considered in the previous hearing.

On February 5, 1976 plaintiff filed a motion to amend his complaint again. This motion was not considered in connection with the previous hearing on May 20, 1976. To the degree that the matters contained in the February 5 motion have not been incorporated in the plaintiff's motion now before this court they are considered to have been waived, and accordingly are hereby denied.

2. Mass. Gen. Laws Ch. 260, # 12 deals with the statute of limitations applicable when the cause of the action has been fraudulently concealed from the person entitled to bring it.

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OWEN F. LYONS — Civil Action
v. — No. 75-3845-M
JOHN F. FAGAN ET AL

ORDER

July 15, 1976

MURRAY, DISTRICT JUDGE

In accordance with the Memorandum and Order of july 13, 1976, it is ORDERED that the complaint, as amended, be and hereby is dismissed.

By The Court
Robert J. Smith Jr.

Frank J. Murray
United States District Judge



UNITED STATES DISTRICT COURT
District of Massachusetts

OWEN F. LYONS — Civil Action
V. — No. 75-3845-M
JOHN F. FAGAN ET AL

July 19, 1976

NOTICE OF APPEAL

Now comes the plaintiff to give notice of appeal to this Honorable Court from the July 13, 1976 Order of the Court dismissing his complaint for lack of jurisdiction.

signed: Owen F. Lyons pro s e

( Certificate of Service require ments met. )

APPELEE'S RESPONSE

TO

PETITIONER'S BRIEF

IN

U. S. COURT OF APPEALS



UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 76-1404

OWEN F. LYONS, Plaintiff/Appellant

V.

JOHN F. FAGAN, ET AL, Defendants/Appellees

---

MEMORANDUM OF LAW
In support of defendants, appellees, S. N. Mangano and John F. Fagan's Motion for Summary Affirmance of Order of the District Court

---

I. District Court Lacks Jurisdiction Since There Is Not Complete Diversity Of Citizenship

The Plaintiff, Appellant, with his allegations of unsound and indeed impossible physiological allegations contained in his complaint is entitled, due to his pro se status, to some special scrutiny and liberal rule interpretations. This liberal interpretation does not remove the duty of the Plaintiff to comply with the jurisdictional rules of the Federal Courts. This special scrutiny and liberal interpretation given to pro se complaints was followed by the Justice of the District Court in reviewing the instant complaint prior to making his order of July 13th (see Appendix, page 113). The Appellees contend that no reasonable reading or interpretation of this complaint would entitle the Plaintiff,

Appellant to relief. Indeed the courts have held there is no necessity to appoint a medical psychiatric psycological panel to determine the nature and extent of the palintiff's complaint where the plaintiff has failed to meet the jurisdictional conditions of the Federal Court, Gill v Allstate Insurance Company, C. A. Michigan 1972, 458 F. 2d., 577.

The dismissal by the District Court in its memorandum of July 13, 1976 was due to the failure of the Plaintiff, Appellant, to obtain jurisdiction in the Federal Courts as he had not achieved complete diversity of citizenship of the involved parties.

It is respectfully submitted as well established law, that the District Court is correct in its action. The factual allegations of the complaint reveal that the plaintiff is a resident of Massachusetts, three of the defendants, to wit: Dr. Fagan, Dr. Mangano, and the Cambridge Hospital are alleged to be citizens of Massachusetts. Dr. Brown is unknown and only Dr. Miner is alleged to be a resident of a state other than Massachusetts. Since 28 U. S. C. paragraph 1332 requires complete diversity, i. e. that no plaintiff may be a citizen of the same state as any defendant, there is no statutory basis for jurisdiction. Strawbridge v. Curtiss, 7 U. S. (3 Cranch) 267 (1806); City of Indianapolis v Chase National Bank, 314 U. S. 63, 62 S. Ct. 15, 86 L. Ed. 47, Reh'g denied, 314 U. S. 714, 62 S. Ct. 355, 86 L. Ed. 569 (1941) 1 W. Barron & A. Holtzoff, Federal Practice and Procedure, Paragraph 26 at 145 (Wright Ed. 1960) ("If there are several parties on one or both sides, there is no federal diversity jurisdiction if one of the parties on



either side is a citizen of a state of which a party on the other side is also a citizen.") Complete diversity of parties is required in order that the diversity jurisdiction obtain, that is no party on one side maybe a citizen of the same state as nay party on the other side. Mas v Perry, C. A. L. 1974, 489 F. 2d. 1396, reh'g denied 492, F. 2d. 1242, cert. denied 95S. Ct. 74, 419 U. S. 842, 42 L Ed. 2d. 70. This circuit has agreed and followed through with the concept of the requirement for complete diversity, Barker v. Lein, C. A. MASS. 1966, 366 F. 2d. 757, as well as the District Court of Massachusetts which previously stated that the Federal District Court has diversity jurisdiction only if all defendants are of citizenship diverse to that of the plaintiff. Carroll v Protection Maritime Insurance Company, Ltd., D. C. MASS 1974, 377 S. SUPP. 1294, Aff'd in part, rev'd in part on other grounds 512 F. 2d. 4.

It is respectfully submitted that the citizenship of the Defendant, Appellee, E. M. Miner is nominal or formal since he has no real interest in the litigation and that, therefore, his citizenship should be disregarded. It is to be noted that the Plaintiff, Appellant admits, on Page 9 of his brief, that the Defendant, Appellee, E. M. Miner of California, was joined simply to meet the diversity requirement.

EVEN were the defendant, appellee, Miner the only non-Massachusetts Defendant, Appellee in the above case legitimately before the Court there would nevertheless be lack of jurisdiction as pointed out in Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction

#3605, which says: "A different question is presented if the Texas and Massachusetts citizens join to bring suit against two or more defendants, one of whom is a citizen of either Texas or Massachusetts. The presumed theory behind the original grant of diversity jurisdiction in Article III was to provide a neutral, national forum for cases in which there would be a danger of bias in a state court against on out-of-state litigant. This jurisdiction for granting federal diversity jurisdiction does not apply to cases in which there are citizens from the same state on opposing sides of the litigation. Thus, in 1806, in the famous case of Strawbridge v. Curtiss, Chief Justice Marshall held that there would be no diversity jurisdiction when any opposing parties were citizens of the same state. In establishing the rules of complete diversity, he dismissed contrary interpretations of the Judiciary Act." This rule has the clearest application to the instant cases where only one Defendant, Appellee, nominal or not, is from a state different than that of the Plaintiff, Appellant.

II. There Is No Federal Question Presented And Therefore Jurisdiction Is Lacking

The Justice of the District Court aptly described the efforts of the Plaintiff to remain in the Federal Court as one of bootstrapping, (see Appendix 113 and 114). The District Court Judge best classified the allegations of the Plaintiff as "fanciful assertions" and thus even when viewed in the extraordinary scrutiny given pro se complaint, were stated not to be sufficient to envoke the Federal question of jurisdiction and he



cited the case of Mainelli v Providence Journal Co., 312 F. 2d. ( 1st Cir. 1962). The Federal Courts have consistently held that there must be substantial reliance on federal law and that it should not be remote and the allegations should have some foundation of plausibility, Lance Intern, Inc. v Aetna Cas. & Sur. Co., D. C. N. Y. 1967, 264, S. SUPP. 349; The test that is normally applied is that of an action asserting federal question may be dismissed for lack of jurisdiction only where the alleged claim under constitution of federal statute clearly appears to be immaterial and made soley for the purpose of obtaining jurisdiction or where such claim is wholly insubstantial and frivolous. Junior Chamber of Commerce of Rochester, Inc., Rochester NY v U. S. JayCees, Tulsa, Oklahoma, CA OKL, 1974, 495 F. 2d. 883, Cert. dn'd 95, S. Ct. 505 419 U. S. 1026, 42 L. Ed. 2d. 301. It is suggested by the appellees that the complaint in the instant case is similar to that which was dismissed in the case of Koll v Wayzata State Bank, CA MINN. 1968, 397, F. 2d. 124.

Therefore, the Motion of the Defendants, Appellees, S. N. Mangano and John F. Fagan, for Summary Affirmance should be allowed.

Respectfully submitted,
Jared H. Adams, Esq.
148 State Street
Boston, Ma. 02109

UPON MOTION:

This memorandum will be treated as the Appellees brief on the merits.

Dana H. Gallup, Clerk
U. S. Court of Appeals, First Circuit.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 76-1404
OWEN F. LYONS, Plaintiff, Appellant

v.

JOHN F. FAGAN, ET AL, Defendants/Appellees

---

MEMORANDUM OF LAW
In support of defendants, appellees, Horst S. Filtzer and Cambridge Hospital's Motion for Summary Affirmance of Order of the District Court

---

I. District Court Lacks Jurisdiction Since There Is Not Complete Diversity Of Citizenship

Although, the Plaintiff, Appellant, makes some sense in an otherwise ludicrous and scandalous brief that pro-se complaints are entitled to special scrutiny and liberal interpretation, the Defendants, Appellants contend that no reasonable reading or interpretation of this Complaint would entitle the Plaintiff, Appellant to relief. Any relief to which he is entitled is not within the power of this Court to grant.

The District Court in its Memorandum of July 13, 1976, dismissed the Amended Complaint for lack of jurisdiction on the basis that there was not complete diversity of citizenship.

It is respectfully submitted, as so well established law, that the District Court Judge was correct.



Under the rule of Strawbridge v. Curtiss, 7 U. S. (3 Cranch) 267 (1806), complete diversity between the parties opposed in interest is a requisite of diversity jurisdiction, except as Congress otherwise provides. See Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction #3605. In determining whether complete diversity exists, nominal or formal parties who have no real interest in the action will be ignored. See Salem Trust Co. v. Manufactureers' Fin. Co., 264 U. S. 182 (1924) and Bacon v. Rives, 106 U. S. 99 (1882).

It is respectfully submitted that the citizenship of the Defendant, Appellee, E. M. Miner is nominal or formal since he has no real interest in the litigation and that, therefore, his citizenship should be disregarded. It is to be noted that the Plaintiff, appellant admits, on Page 9 of his Brief, that the defendant, Appellee, E. M. Miner of California, was joined simply to meet the diversity requirement.

Even were the Defendant, Appellee, Miner, the only non-Massachusetts Defendant, Appellee in the above case legitimately before the Court there would nevertheless be lack of jurisdiction as pointed out in Wright, Miller & Copper, Federal Practice and Procedure: Jurisdiction #3605, which says: " A different question is presented if the Texas and Massachusetts citizens join to bring suit against two or more defendants, one of whom is a citizen of either Texas or Massachusetts. The presumed theory behind the original grant of diversity jurisdiction in Article III was to provide a neutral, national forum for cases in which there would be a danger of bias in a state court against an our-of-state litigant. This justification for

granting federal diversity jurisdiction does not apply to cases in which there are citizens from the same state on opposing sides of the litigation. Thus, in 1806, in the famous case of Strawbridge v. Curtiss, Chief Justice Marshall held that there would be no diversity jurisdiction when any opposing parties were citizens of the same state. In establishing the rule of 'complete diversity', he dismissed contrary interpretations of the Judiciary Act." This rule has the clearest application to the instant case where only one Defendant, Appellee, nominal or not, is from a state different than that of the plaintiff, Appellant.

II. There Is No Federal Question Presented And Therefore Jurisdiction is Lacking

The Defendants, Appellees , relying on the decision of the District Court Judge in his Memorandum and Order dated July 13, 1976, where he disposes of the Plaintiff Appellant's federal question allegations as follows: "With reference to the allegations of federal question jurisdiction, the complaint is frivolous. Plaintiff now seeks to bootstrap allegations of medical malpractice into violations of the First and Fourteenth Amendments and certain 'civil Rights Acts of the 1800's and 1960's' by asserting that the acts of the defendants have in some unspecified manner interfered with his 'participation in the federal elections of 1968 and 1970 ...'. These fanciful assertions, even given the extraordinary hospitality the federal courts are required to provide the pro se complainant, are insufficient to invoke the federal question jurisdiction. Cf. Mainelli v. Providence Journal Co., 312 F. 2d 3 (1st Cir. 1962)."



Therefore, the Motion of the Defendants, Appellees for Summary Affirmance should be allowed.

Respectfully submitted,

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UPON MOTION:

This memorandum will be treated as the Appellees brief on the merits.

Dana H. Gallup, Clerk
U. S. Court of Appeals, First Circuit.